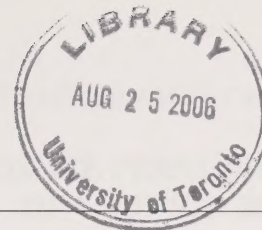


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Thursday 10 August 2006

Journal des débats (Hansard)

Jeudi 10 août 2006

Standing committee on justice policy

Human Rights Code
Amendment Act, 2006

Comité permanent de la justice

Loi de 2006 modifiant le Code
des droits de la personne

Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
Greffière : Anne Stokes



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 10 August 2006

Jeudi 10 août 2006

The committee met at 1009 in the Valhalla Inn, Thunder Bay.

HUMAN RIGHTS CODE
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT LE CODE
DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

The Chair (Mr. Vic Dhillon): Good morning. Welcome to the meeting of the standing committee on justice policy. The order of business today is Bill 107, An Act to amend the Human Rights Code. This is our third day of public hearings. We met in London on Tuesday and in Ottawa yesterday. Public hearings will also be held in Toronto this fall.

For your information, to make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services are being provided each day. As well, two support attendants are present in the room to provide assistance to anyone requiring it.

To facilitate the quality of the sign language interpretation and the flow of communication, members and witnesses are asked to remember to speak in a measured and clear manner. I may interrupt you and ask you to slow down if we find you are speaking too quickly. Thank you.

I understand there is a motion. Not yet? Okay.

THUNDER BAY AND DISTRICT
INJURED WORKERS SUPPORT GROUP

The Chair: We'll begin, then, with our first presentation from the Thunder Bay and District Injured Workers Support Group. Steve Mantis, good morning.

Mr. Steve Mantis: Good morning. Thank you, Mr. Chair. My name is Steve Mantis, and I'm the treasurer of the Thunder Bay and District Injured Workers Support Group. On my right is Eugene Lefrançois, who is a trustee and a member of our organization.

We want to thank you first for coming to Thunder Bay and including us. I know that we're so far from Toronto that we don't always get on the list, so we sure appreciate

that you did come up and make the time to hear from folks here in the great northwest.

Let me just start talking a little bit about our organization. The Thunder Bay and District Injured Workers Support Group was started in 1984, in response to pending legislation to amend the Workers' Compensation Act. We're a volunteer organization. We have no paid staff. We have a board of 15 that is our corps of volunteers that delivers service. We have an office that is supplied by a couple of the local unions in town that we can operate out of. We average about 60 people coming into our office every month. Here we are, no staff, and 60 people walk into our office looking for help with their problems, primarily with the workers' compensation system. These are workers who are disabled at work. That's not counting all the phone calls and the bump-ins when you're in the supermarket.

Our organization has two main goals. The first is really to make the system work better for everyone. Through that, we research and try to understand the various aspects of the systems we're dealing with so that we can then intelligently participate, whenever we get the opportunity, when anyone will listen to us, to try to make the system work better. The other is to provide information and support to workers who are disabled at work.

I don't know if you're familiar, but every year there are over 300,000 workers who are hurt at work. Of those, 14,000 to 15,000 a year end up with a permanent disability—people like me: amputations. Mostly these are invisible injuries, ones you wouldn't know if you just saw a person walking down the street—a person like Eugene who's had three knee replacements now. In Ontario alone, cumulatively there are 300,000 workers who have a permanent disability as a result of a workplace injury or disease. These are recognized numbers through the Workers' Compensation Board or the Workplace Safety and Insurance Board. Research shows that somewhere near 40% of the injuries never get reported, and we also know that 30% of the workforce isn't covered at all, so the numbers might be double that in terms of the real tragedies that happen in the workplace.

What happens? How does our society then support people once they become disabled at work? This has some bearing, because today we're talking about human rights. Human rights are for whom? Whom do we have human rights for here in Ontario and in Canada? Certainly injured workers don't feel like their rights are

being protected, because of what happens to us. Here we've got the research, the 300,000 people who went to work to put food on the table for their families. Somewhere between 50% and 80% are chronically unemployed now. The majority are living in poverty. We did a survey of our membership at an information fair that we had in the spring: 60% said they had considered committing suicide as a result of their disability and the way they were treated both by the public system, that was there to help them, and by their employer and their co-workers.

To me, this is the essence of what human rights is about: When you're down on your luck, when you've got extra barriers that you have to face, you're going to get some support from society, from our communities, to overcome those barriers and regain your status as an active member of society. Our records really are going downhill in terms of the government's commitment to protecting our human rights. We see it in a number of sectors. It seems to me that if you're making \$60,000, \$80,000 or \$100,000 or, like the management of the WCB, \$200,000 a year, you don't have to worry about your human rights because you can pay for all the stuff you need. It's people who are living in poverty, people who are facing systemic barriers, who aren't valued to that limit in society. That's who really needs protection of their human rights.

How are we doing? Does anyone know what the United Nations just said about Canada's record on human rights? Did anybody follow what the United Nations had to say? Nobody, eh? Interesting. The United Nations just evaluated Canada's record on human rights and found that Canada is falling short, particularly for people who are living in poverty and aboriginal people. Really we look at past performance. We look at how the government, for the last dozen years anyway, has been on a course of cutting back public services and really allowing people to make their way all by themselves in the world.

1020

Freedom of choice: We'll give you freedom of choice. If you've had a hard time and your only choice is whether to buy Kraft Dinner or diapers for your kids, I'm not sure what kind of choice that is. Human rights include security of housing, security to be able to feed your family. Certainly this government and the previous government and how they treat poor people have not shown your commitment to human rights. I don't see it. Forcing people to make those choices is not protecting their human rights.

We are helping people all the time. Here we are, a bunch of volunteers, and we feel like we're the ones who are the safety net in our community for workers who are disabled. Where is the public system? Where is the commitment to human rights in our government? We don't see it. The agency that was created to help injured workers has received less and less funding over the last 10 years. So they have to tell half the people who come to them to go away because they can't help them, right off the bat.

The government introduced legislation to say, "We're going to help human rights because we're going to speed up the process," and they have no clear indication of how to do that, of how they're going to replace the work of the human rights commission, other than, "We're going to do something that's good for you. It's okay. Trust us." Why? Why should we trust you? You haven't shown us that you're worthy of that trust. You haven't shown us that in fact you are interested in protecting our human rights. It sure seems to me it's more like, "We'll protect the economy; we'll protect our position somewhere internationally," but in terms of people who are needy in our society in Ontario, I don't see it. So when you say, "Trust us," you have to give us something to build that trust on. Certainly, our organization doesn't see it. We are the folks who are living in poverty. We are the people who are making tough choices about the little bit of money that we get and we don't see the government supporting us.

It leads me to think, what is the role of government? For years and years and centuries the role of government was to protect the people in power: the king, the queen and the emperor. That was the role, in large part, right? Then we went through a stage where we had more democracy and more protection for all citizens. Now I feel like we're going that other way again. I feel like the commitment to protect all the citizens, to try to build inclusive societies, is disappearing and it really makes me sad. We elect you, our elected representatives, to show leadership for all of us, and what do we see? We see more people ending up in poverty. We see a bigger gap between the rich and the poor. We see what we deal with all the time at the workers' compensation board and we go to the Minister of Labour and say, "Look at the numbers, look at the people who are falling further and further into poverty," and the minister says, "We can't afford to increase premiums to employers." The economy is booming, everyone is making big profits all over the place, but we can't afford to make employers pay for the injuries that are caused in their workplace. When legally they have the responsibility to protect the health and safety of their workers, we can't afford to make them pay for it anymore. So it's the workers themselves who are going to have to suffer; it's the families. They're the ones who will have to pay now. Now, he won't say that. He just says, "How can we do this? We can't afford it." Who can't afford it? Someone has got to pay. If it's not GM and Ford, it's Eugene and I. We're the ones who every year see our ability to care for our families go down and down as a result of a workplace disability. So someone is paying, but your government has taken the position that it's not the big boys who have to pay, it's somebody else. Well, the somebody else is us.

So we're really looking for leadership from the government—not leadership from Ford Canada or Bombardier—that represents the people. And this whole process of how we got to Bill 107 here: I don't know whom the government was talking to or listening to. Certainly in our community, which deals with human

rights issues on a regular basis, none of us were contacted. When the government starts thinking that the bureaucracy knows more than the people themselves, which is where I'm guessing this stuff comes from, I think you're starting to get out of touch. That's why these types of events are so important and why it's so great that you did come to Thunder Bay, because you need to talk to the real live people.

I only wish that your committee could actually do something. I've been presenting to these committees for 20 years, and I'm not sure I've ever seen them overrule anything that the minister wants to do. It's a little bit of craziness. So I'd like to see a little bit more backbone around the table, to tell you the truth. Certainly we don't see our own MPPs here, who say they support these issues that we bring forward, really standing up. You've got to follow the party line. Where is your own integrity here? What were you elected for? Why did you get involved? I don't know.

I think as well what we see is that in terms of human rights, the community legal clinics have been the group that has been most active in supporting the human rights of people in Ontario. Our organization provincially, the Ontario network, has now twice gone to the Supreme Court of Canada on cases of human rights, and it was the community legal clinic in Toronto, ARCH, that was there to represent us. There's no way we could have done that without that free service, without publicly funded legal clinics. But what we're hearing all across the province is that these clinics are so overwhelmed that they really can't do much anymore. They have to focus on people who just got thrown out of their house, out of their apartment, who got cut off welfare because they did something wrong: They filled out the form wrong or they checked a wrong box somewhere. That's where they have to focus: getting food and shelter for a person today. They don't have the ability to really push a lot of these issues that take longer and are more systemic. So leadership, to me, is showing more support for those legal clinics.

When you're bringing in changes to human rights, tell us what the heck you're really planning to do. If you say, "Okay, there's a backlog, and we want to allow a person to opt to go directly to the tribunal as an option," if that's their choice, if they've got money in their pocket and they want to go hire a lawyer and they want to avoid a lot of the red tape at the commission, okay. But does that mean that everybody can no longer get the support and the investigative capacity that happens at the commission? I'm not sure that's a good trade-off.

1030

I'm going to finish by just briefly mentioning too a research project we're doing. It's really interesting, as injured workers, being on the receiving end of this stuff. We go to the WCB and say, "What happens to workers, long-term?" We've been asking this question for 15 years, and they don't know. They don't know what happens, long-term, to people who are disabled. Government is all the time talking about accountability and outcomes:

"We want measurable outcomes." Well, don't we want to measure how this system, that spends \$3 billion a year, does its job? Don't we want to know whether in fact it is helping people? No one really looks at that. They look at the dollars, and that's the outcome they look at. So in fact injured workers have gotten together with university-based researchers to try to see what really happens. This little yellow flyer is our introductory for a five-year project we're launching now. After the next election, if some of you are around, we'll probably be talking to you some more about the findings of that research and looking to you to help us create a system that works for all folks. Eugene, do you want to add a little bit?

Mr. Eugene Lefrançois: I don't have much to add, except back to what Steve said about the legal clinics. What is the budget that you're planning to propose for the legal clinics? I haven't seen a number yet anywhere on all the literature I've read, how much you're planning to propose. That's just one question.

Another question is, what are the safeguards that will be in place so it won't cost anything for the average citizen? Is there going to be a means test? Are you going to check it out, so if you make \$12,000 a year you don't have to pay anything, but if you make \$12,001 a year you have to pay something? Because the ones who need it, that's about their income.

I had a case, and it took six years to get a decision on the tribunal—six years. I've got another one—it's 21 years and I'm still waiting for an answer. So if you're talking about tribunals that have some power, I hope you kind of speed up the process. Twenty-one years for an answer—I've got patience.

People who live in the north who travel to the south can buy a bottle of whisky in downtown Toronto for—what's a 26-ounce going for today, \$30?

Mr. David Zimmer (Willowdale): It's \$22.95.

Mr. Lefrançois: Okay, \$22.95.

Mr. Peter Kormos (Niagara Centre): What the hell are you drinking?

Mr. Lefrançois: So you can buy a \$22.95 bottle of whisky on the corner of Yonge and Bloor, and you can go to Armstrong, not too far from here, and still pay exactly the same amount—\$22.95—for that exact same bottle of whisky. If you get a loaf of bread in Toronto, what is it, 85 cents? It's three bucks up in Armstrong. Is that human rights? How about milk? You can buy a Texas mickey in downtown Toronto for, say, \$35—depending on what you're drinking, right? You go to Pickle Lake, you're looking at 100 bucks. That bread will cost you four, five, six times more—and that's just where the highway is. When you fly in and you have to get your bread or milk dropped off, is that human rights, when the prices are so various? Is that human rights, yes or no, to get the staples of life? I need an answer so I can move on here.

The Chair: That's not—

Mr. Lefrançois: Is that human rights, though, for the staples of life?

The Chair: I'm not going to comment on that. You can continue on.

Mr. LeFrançois: Okay. I belong to this Metis group; I am a Metis. We won a case in the Supreme Court of Canada called *Powley*. It seems the judges saw fit that the argument that the Metis should be treated like all the other aboriginal people in Canada was a good argument. It seems that the province of Ontario has taken it upon themselves—and it doesn't matter what government it is; it doesn't matter if it's Liberal, NDP or Conservative—that they don't want to bargain, they don't want to talk, they don't want to negotiate. Who has human rights then? Who do we go to? Do we go to the Ontario Human Rights Commission to argue with Ontario for human rights, or do we go to the UN? Do we go back to the Supreme Court and say, "Can you force the province to negotiate?" Is that human rights?

My final thing—I think it's final. You want to set up a bunch of lawyers to handle these cases, the proposed human rights cases. I've got a suggestion that we hire injured workers who are in LMR programs, who will work with Ontario human rights. We have been waiting for a long time, so we've already got that down; we already have a lot of job training. I guess this firm would be called Bill 'Em, Soak 'Em and Liar. There you go.

The Chair: Thank you. There are a couple of minutes for each side. We'll begin with the official opposition.

Mrs. Christine Elliott (Whitby-Ajax): As you know, this is our third day of public hearings on Bill 107. I can tell you that the concerns you've expressed today have been expressed by a number of other groups. Your basic question about how this system is going to serve people better in advancing the cause of their human rights: I share your concerns; the two opposition parties feel exactly the same way as you do about it. There are some significant gaps here, particularly when you look at advancing directly to the tribunal and how people are going to navigate that when you don't have basic information about the legal support centre and how it's going to be funded. That is and should be a question of concern to all of us, because although there are some broad strokes in this legislation that look like they're pretty good on the surface, as we all know, the devil's in the details, and we don't have the details. That's what these hearings are about: to hear about the important things that people need to know about. That's what we're going to be working on as we move forward with this. So I thank you very much for your presentation, and please know that many others share your concerns.

The Chair: Thank you very much. Mr. Kormos.

Mr. Kormos: Thank you very much, gentlemen. Your rather Shakespearean perspective on lawyers is an interesting one. The only comfort I take is that I'm not the only lawyer on the committee. The point's well made.

You should know that community legal services endorse this legislation. They're about the only ally that the government has found, and I don't begrudge the government some allies, because it can be awful lonely trying to peddle unpopular and poorly drafted legislation across the province. I'm not familiar with the details of the intimate relationship between the legal clinics and the

government around this bill, but the legal clinics support the legislation.

I also want you to know that this committee has the power to accept or reject any amendment put before it. The government happens to have a majority. Take comfort in this: the Liberal members of this committee, these people sitting right here, I can say with certainty, are amongst the best of that Liberal caucus. They are the most open-minded, the least partisan and the most thoughtful members of that caucus, and we need them to support amendments; for instance, if you're going to have direct access, to create a choice to retain the commission, to beef up the commission, to give it the resources that it needs so it can do its job in a timely way, so that people who can't afford to hire high-priced, \$800-an-hour lawyers can access a rights advocacy system as well. It's the issue of costs, right? The litigation chill of the risk of having to pick up the costs of the other party should you lose at a tribunal—because an adversarial system, other lawyers here will tell you, even with the best-prepared case, can still be something of a crap shoot. You folks know that, by virtue of your appearing in front of arbitral tribunals on a regular basis.

1040

Look, if we're going to have any chance at all of a group of government members taking their government on and doing the right thing, instead of drinking the Kool-Aid and following the party line, it's this group right here. If they can't do it, nobody in that government caucus can. So I'm looking forward to the clause-by-clause and I'm looking forward to seeing these independent-minded, bright, capable, thoughtful, fair-minded Liberal caucus members show the independence and the courage and the commitment to their voters that they promised their voters they would get from them once they were elected. I think you should join us at Queen's Park, or at least watch us on the legislative channel.

The Chair: Thank you, Mr. Kormos. The government side.

Mr. Zimmer: Just in case you're not aware, I want to point out that the Attorney General in the Legislature has made a clear and unequivocal commitment to amend the bill to ensure that everybody who has a complaint before the tribunal does receive legal support, has a lawyer attached to their case to see the case through with them.

Furthermore, the Attorney General has also committed, after this committee has completed its hearings and done its work, to consider any other amendments that come forth.

Thirdly, I just wanted to point out, because you did make reference to ARCH—I think they've worked with your organization and injured workers over the years and have a relationship which you obviously have confidence in. You should know that yesterday at the hearings in Ottawa, ARCH appeared, and ARCH is very supportive of the direct-access model. You might want to have a look at the Hansard proceedings yesterday and hear what they had to say, and their rationale for supporting the

direct-access model. They too, however, did make the statement that they were also very supportive of and insistent on the amendment to ensure each complaint had independent legal representation. So I would urge you to have a look at ARCH's Hansard record yesterday.

Mr. Mantis: I think we, as well, like the idea of the choice of a direct-access model, though maybe that's not the only choice, really, based on how this all unfolds and what kind of support there is both in the direct access and through the investigative powers of the commission.

I wish I had more confidence when a government minister stands up and promises something, because we had Bill Wrye stand up in 1985 and promise that injured workers would never have to come before Parliament, cap in hand, asking to have their pensions increased when inflation went up. We had Greg Sorbara stand up in the House and guarantee that when people were disabled and out of work, they would get their wage loss. That's not what happens. So I really wish that we could just trust the government minister who promises something. But when you've been at it for 20 years and you've seen the promises go by the wayside, the trust starts diminishing. I try to live by my word. I wish the finance minister of this government would as well.

The Chair: Thank you for your presentation today.

FAYE PETERSON TRANSITION HOUSE

The Chair: Next we have the Faye Peterson Transition House.

Ms. Debbie Ball: Good morning. I'm on holidays, so I do apologize for not getting you the handout ahead of time. I thought it was important to interrupt my holidays and come and visit you this morning.

I am Debbie Ball and I am the executive director of the Faye Peterson Transition House here in Thunder Bay. We're a 24-bed shelter; we provide support and shelter to abused women and children. The mandate of the Faye Peterson Transition House is to support women and children to live lives free of violence. But we have a vision, and our vision is to have a society where all women and children live these lives free of violence, in safe communities free of racism and oppression, and also where women, youth and children are equal, fully participatory members of society. We also have a vision where perpetrators of woman abuse are held accountable through vigorous prosecution.

Much of my work as the executive director is done at the systemic level. I work provincially to ensure women's voices are included in social policy development through the use of a female-gendered lens.

Women, tragically, are abused and in some cases murdered because of ongoing harassment, including sexual harassment. Abused women also experience discrimination when they are recipients of social assistance, and can experience unequal and unfair treatment, for example, in accessing housing or using other social services. When this occurs, they may well be entitled to access the enforcement protection of the code, but very

often in the past, legal clinics have not recommended accessing the code's enforcement process because it does not afford our women an accessible, timely or effective remedy.

But the Faye Peterson Transition House does support Bill 107 in principle, because it will provide direct access to an immediate hearing. Abused women are living in crisis. They have many obstacles that they need to overcome and they cannot wait over a year for an investigation to begin. Also, we think increased access will assist us in holding perpetrators of woman abuse accountable. If the system can implement Bill 107 with amendments, and cases are won based on harassment and sexual harassment, perpetrators of violence will be held accountable for their behaviour—and it also sends a strong message to abusers. We support Bill 107 with the addition of mandatory language for a fully accessible and funded province-wide human rights centre to ensure women are provided the support and representation they will need before the tribunal.

So what are the problems with the system right now? First of all, the commission's veto over hearings. Right now, only about 6% of human rights complaints are referred to a hearing. The commission holds behind-closed-doors meetings to decide whether to dismiss a complaint without a hearing, with no ability of the parties to appear or participate. This results in many cases which have merit being dismissed without a hearing.

They also have long delays. Right now, the investigation takes up to five years, and then the tribunal process for the 6% can take a further one to two years. This delay is structural and built right into the system because the same work done in the investigation gets repeated in the tribunal process.

The commission has conflicting roles as well. Currently, the commission is supposed to be an advocate for human rights at the same time as it is obliged to be a neutral decision-maker for individual complaints. The reality is that the commission's resources routinely get swallowed up by dealing with the individual complaints, leaving little left to play any significant advocacy role.

Also, a lack of complainant participation: Right now, once a complaint is filed, the commission takes over the case and the complainant completely loses control over the process and only has limited rights to participate. This is a paternalistic and disempowering approach to human rights complainants which is unlike virtually any other individual rights enforcement process. Women who have been abused have been disempowered enough. They need a system that will empower them to move forward and to start the healing process.

How Bill 107 will correct these problems:

The first one definitely is access to the tribunal hearing. Bill 107 guarantees that complainants will have direct access to a tribunal hearing with no commission veto.

1050

Significant reduction of delays: Bill 107 provides a one-step process for complaint resolution, which will shorten the pipeline from complaint filing to a final

decision, with a goal of reducing the time it takes to resolve a complaint to one year. We can live with one year.

Commission as a strong advocate: Bill 107 strengthens and clarifies the commission's role as a strong advocate for human rights by relieving the commission of its conflicting role in dealing with individual complaints.

Complainants will have control: Bill 107 gives the complainants full control over their claims and the ability to fully participate in the process.

Some suggested potential amendments to Bill 107: While the Faye Peterson Transition House supports Bill 107 in principle and endorses the general approach taken to the enforcement of human rights which is embodied in Bill 107, the Faye Peterson Transition House wishes to make submissions to this committee in order to make this legislation even stronger and more effective in the promotion and protection of fundamental human rights in Ontario.

We'd like to see supports for the claimants. Specifically, we'd like to see you strengthen section 46.1 to provide a clearer commitment to support for claimants. Adequate resources should be allocated to ensure abused women and all claimants are adequately represented. Several recommendations follow on how to strengthen this section.

Use the "advise and represent" language from section 176(1) of the Workplace Safety and Insurance Act, whereby the functions of the Office of the Worker Adviser include to "advise and represent" workers.

Replace "may" in the existing section 46.1 with the mandatory "shall."

State that support would be available "to any person who is or has been a claimant," as per the language in the former section 86(q) of the Workers' Compensation Act;

Include language to ensure that sufficient resources are provided to enable the office to carry out its functions.

Provide for an annual review of the support being provided.

With these general principles in mind, the following language is proposed to replace section 46.1:

"46.1(1) The minister shall establish a system for providing high-quality support services to any person who is, has been, or may be a claimant under this act, and to provide information, support, advice, assistance and legal representation to those seeking a remedy at the tribunal.

"(2) The minister shall enter into agreements with prescribed persons or entities for the purpose of establishing this system of support services, and shall ensure that sufficient resources are allocated to this system to enable its functions to be carried out and to ensure that support services are available throughout the province.

"(3) On an annual basis, a person appointed by the minister shall review the functions and operations of this system, and shall advise as to the sufficiency of resources allocated to this system, the functions assigned to this system, and the scope of individuals who have access to the services provided."

Another amendment, structure of the commission: First, the commission should report to the Legislature, as is the case with the Ontario Ombudsman and the Information and Privacy Commissioner, to ensure its independence. That will require amendments to the following sections.

There should also be requirements to be appointed as a commissioner. It's important for Bill 107 to articulate certain requirements for individuals to be appointed as a commissioner, including such requirements as active involvement and lived experience in human rights, and demonstrated commitment to human rights. Language also should be included to ensure diversity and that commissioners are representative of the community.

I've given you an example of language for section 27(2): "Persons appointed as members of the commission shall possess active involvement and lived experience in human rights and demonstrated commitment to human rights. The members of the commission shall be representative of the community."

The committee should carefully consider submissions from the affected communities regarding the Anti-Racism Secretariat and Disability Rights Secretariat. The committee should hear from the affected communities as to how best to present their issues in the new system and whether establishing these secretariats meets their needs or whether it should be left to the commission to establish such secretariats or advisory groups as may be required.

I would also tell you that abused women experience a lot of oppression and that certainly one of our roles in looking at how we develop social policy is to have a clear understanding of what oppression is and then to do some training in the rest of the province around anti-oppression and anti-racism. So having Bill 107 include something on anti-racism and anti-oppression would certainly help us do our work when we're working with government; and I talk about using a female-gendered lens in developing social policy.

The role of the commission:

(1) Ability to obtain documents and information: Bill 107 should impose a duty to cooperate with a commission inquiry, investigation or review, and a duty to provide relevant documents or records as requested by the commission. In the event of non-cooperation, the commission should have the right to file an application with the tribunal to obtain an order to require the production of whatever documents or records have been refused.

(2) The commission should have the ability to intervene in any application, subject to such terms and conditions as the tribunal may impose. The commission should have the right to intervene in any application, subject to such terms and conditions as the tribunal may impose. The considerations for commission intervention should be set out in the tribunal's rules, and the tribunal should consider the consent of the claimant as an important factor as to whether or not the commission should be granted intervention. And I would emphasize the consent of the claimant.

Another point would be the tribunal's composition and reporting structure. There should be requirements for qualifications and expertise for tribunal members. As with commissioners, there should be certain requirements for tribunal members, and in particular that tribunal members be required to possess requisite qualifications, experience and expertise.

It is recommended that the following provision be inserted into section 32 of Bill 107:

"Persons appointed as members of the tribunal must have demonstrated experience, expertise and interest in, and sensitivity to, human rights."

The tribunal application process: If the correct form is not used to file an application, this should not stop the application from proceeding. Third parties must have the right to file applications on behalf of individuals whose rights have been infringed.

Many community agencies and equality-seeking groups like the Faye Peterson Transition House have fought long and hard over the years to have the right to file applications on behalf of individual members of the communities they serve. One of the reasons this is necessary is because the women we serve in these community agencies and groups are often vulnerable and are reluctant to put forth their own names as claimants. On other occasions, while community groups and agencies are made aware of actions which infringe the Human Rights Code, the specific individual who is affected cannot be identified. Sometimes, for community agencies and groups that serve homeless or transient communities, the individuals whose rights have been infringed simply cannot be located.

Bill 107 should be amended to provide community agencies and groups with the ability to file an application with the tribunal on behalf of members of the communities they serve whose rights have been infringed.

The time limit for filing an application should move to two years instead of six months, and this meets the general standard for civil claims.

The tribunal hearing process: Certain minimum procedural safeguards should be in place before the tribunal can summarily dismiss an application. Right now, an application can be dismissed without any requirement for any kind of hearing. The word "hearing" in the opening line of section 41(1) should be replaced with "full hearing on the merits."

Some kind of oral hearing should be required before an application can be summarily dismissed. One of the main criticisms of the commission's summary dismissal powers under the existing section 34 of the Human Rights Code is that complaints are being summarily dismissed behind closed doors on the basis of written submissions without the claimant having any direct access to the decision-maker. This needs to be rectified in the new system.

There should also be a legislative requirement for the tribunal to provide reasons for any summary dismissal.

Bill 107 should specify that the applicant has the right to elect whether to use alternative dispute resolution—

ADR—mechanisms instead of holding a hearing. The language in section 37(1) of Bill 107, which permits the use of ADR mechanisms by the tribunal, should be amended to give the claimant the right to choose whether he or she wants his or her claim resolved through ADR. I would tell you that alternative dispute resolution is seldom, if ever, appropriate for abused women. Abused women come out of a history where there has been a huge imbalance of power, and to put them in the same room or in a position of having to bargain with the same abuser is totally unacceptable. However, giving women the right to choose is also empowering and necessary in the healing process.

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The emphasis on expedition in section 37(2) of Bill 107 needs to be balanced by an equal emphasis on deciding the case on the merits and ensuring procedural fairness.

The tribunal should be required to consider documents published by the commission. In its current form, section 44 of Bill 107 only states that the tribunal "may" consider documents published by the commission. If we truly want the commission to be a research and policy-making body, then the tribunal should be required to consider the policies and documents published by the commission. This can be achieved simply by changing the word "may" to "shall."

No right of appeal: One of the many problems with human rights enforcement systems over the years has been the ability of parties to an adverse tribunal decision to appeal to the courts to get the decision overturned. This is a pattern that has repeated itself over and over again in the history of human rights enforcement. The broad right of appeal that currently exists under the code has resulted in path-breaking tribunal decisions being overturned on their way up the judicial ladder, and often only restored at the level of the Supreme Court of Canada at great expense and, again, delay to the claimant, and often nullifying any meaningful remedy because of the delay and expense, even if the decision is ultimately restored.

While many other tribunals, such as the Ontario Labour Relations Board and grievance arbitrators, are respected and their decisions overturned only if they are patently unreasonable, the Human Rights Tribunal is subjected to the far more stringent standard of correctness, which means that the court can overturn the tribunal's decision on appeal solely on the basis of the court simply having a different view of the matter.

The entire reason for setting up an expert Human Rights Tribunal to deal with discrimination and harassment issues was originally because of the concern that the courts were not properly addressing discrimination issues. Both the Cornish report and the La Forest report recommend that human rights tribunal decisions be respected like other expert tribunals.

The provision giving the tribunal the power to charge fees for expenses incurred should be removed.

Civil action: One problem with the current section 46.2 is the court's remedial authority upon a finding of

discrimination is limited to awarding “compensation ... for injury”—

The Chair: Can I just interrupt? Can you slow down the pace?

Ms. Ball: Slow down for the interpreter?

The Chair: Yes. Thank you.

Ms. Ball: Oh, sorry—“to dignity, feelings and self-respect.” This prevents the court from awarding, for example, compensation for lost earnings as a result of discrimination, which is the most significant reason for asserting a human rights claim upon the loss of employment. What this means is that claimants will continue to be forced to file both a statement of claim in the courts and a human rights complaint at the tribunal, and the duplication and expense of multiple proceedings will continue.

These two problems can easily be solved with the following changes, and then I’ve listed 46.2 and how it would be written:

“If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under part I of another party to the proceeding, the court may order the party who infringed the right to pay monetary compensation to the party whose right was infringed on the same basis as the tribunal under section 42 of this act and award such other remedies as are available to the tribunal under section 42 of this act.”

Bill 107 should also be amended to permit any tribunal to have the power to award remedies on the same basis as the tribunal under section 42 of the act, in accordance with the limits of the tribunal’s remedial jurisdiction.

Section 46.2(2) of Bill 107 should be changed to ensure that claimants can bring an action for discrimination if it is together with a wrongful or constructive dismissal claim or some other claim. Section 46.2(2) appears to say that a person can’t bring a civil action if their only claim is a claim of discrimination contrary to the Human Rights Code. But when the term “cause of action” is used, it appears to restrict or limit the ability of the plaintiff who has initiated a wrongful dismissal claim to also assert a separate and independent claim for discrimination in violation of the Human Rights Code, which awards damages on a different basis. The effect of this would be to force people to continue to engage in more than one legal proceeding.

This problem can easily be solved with the following changes: “(2) Subsection (1) does not permit a person to proceed with an action based solely on an infringement of a right under part I.”

Finally, Faye Peterson Transition House would like to comment on what we believe are misconceptions about Bill 107. We are aware that some individuals and groups—and many, I have to tell you, that I work with as well—some of whom have appeared probably before this committee or provided submissions to this committee, have been voicing opposition to this bill. I heard this morning some opposition as well. We believe this opposition is largely based on misconceptions both about the

current human rights system and about the actual provisions of Bill 107. Before concluding, I’d like to take an opportunity to address these with you.

There have been full public consultations. Some have expressed concern about a lack of consultations on human rights reform, and this is unfounded. Broad-based public consultations on human rights reform were held prior to the Cornish report in 1992 and the La Forest report in 2000, both of which made recommendations which are now being implemented in Bill 107. In addition, last spring the Attorney General, Michael Bryant, held listening sessions on human rights reform with a broad range of groups, including many of those currently voicing opposition, and the commission conducted a full consultation in the fall of 2005. The committee is now holding province-wide consultations on Bill 107 through the hearings being held this summer. So I would say there has been full public consultation.

Currently, there is no guaranteed right to an investigation or a speedy investigation under the present system. Many complaints are currently dismissed by the commission without any investigation whatsoever. Where a complaint proceeds to investigation, the wait for the investigation to even start is often over a year and many times even longer. Further, the commission’s investigation is not designed to assist the claimant; rather, the commission uses the investigation as a basis for dismissing the vast majority of complaints without a hearing. Investigations and dismissals of complaints currently happen behind closed doors without the claimant having the right to question witnesses relied upon to dismiss the complaint.

Currently, there is no legal representation. No legal assistance is currently provided to claimants with the filing of their complaints, at mediation or during the investigation process. A commission lawyer is only appointed to a case if it is one of the handful sent to the tribunal for a hearing. That’s the 6% we were talking about. Even then, the commission lawyer represents the commission, not the claimant, and can withdraw from the case. Commission lawyers also currently prepare legal opinions recommending the dismissal of complaints. In contrast, the government has announced its commitment to ensure that legal representation is available to all claimants who need it.

Bill 107 protects decisions made by an expert Human Rights Tribunal. The current system includes a broad right of appeal to the courts, which has resulted in many progressive decisions of the Human Rights Tribunal being overturned. Bill 107 would protect the decisions made by tribunal members with expertise in human rights from interference by the courts in the same way that other expert tribunals are protected.

Bill 107 does not impose user fees. Bill 107 contains a standard provision which currently applies to all administrative tribunals which allows them to charge for services such as photocopying etc. Bill 107 does not impose user fees, nor is there any intent to do so. As indicated above, the Faye Peterson Transition House supports the removal of this provision in order to allay these fears.

Bill 107 is not the same as the BC model. Under the BC model, the Human Rights Commission was eliminated and only the most minimal resources for legal representation were made available. In contrast, Bill 107 strengthens and clarifies the role of the commission, and the government has expressed a strong commitment to ensuring that adequate resources for legal representation will be made. That's it.

The Chair: Thank you very much. About a couple of minutes each. We'll begin with Mr. Kormos.

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Mr. Kormos: Thank you very much, Ms. Ball. I understand the debate. I understand the Cornish recommendations. I understand the difference between a commission-driven system and a direct access system. I appreciate your support for the government proposal. However, the impression one gets is that everybody is wrong but you and people who agree with you. David Lepofsky is wrong and the association of Ontarians with disabilities. The association for community living is wrong. All those groups—

Ms. Ball: We have had discussions with them.

Mr. Kormos: One moment—OPSEU; the Ontario Federation of Labour; lawyers like Mr. Hameed, who practises in the area; and there is a debate amongst lawyers. I respect the position of people who support the direct-access model; however, with all due respect—and I appreciate that your submission is not the only one that has been cribbed, to a large extent, from roots. There will be AODA-based submissions that will have similar language in them. There will be OFL-based submissions that will have similar language in them. But when a transition house then proceeds to part IV with the misconceptions about Bill 107, which is the government line—

Ms. Ball: I—

Mr. Kormos: —Ms. Ball, please—it causes me great concern because it diminishes, in my view, and maybe my view only, the strength of your submission. The government is quite capable—it has spin doctors, it has hundreds of thousands of dollars worth of staff here and in every community we go to working with the media, spinning the government line.

The Chair: Thank you, Mr. Kormos. The government side.

Ms. Ball: Do I get to respond to that?

Mr. Lorenzo Berardinetti (Scarborough Southwest): I wonder if we can give Ms. Ball a chance to respond to Mr. Kormos's comments.

Ms. Ball: I can say that we have had intense discussions and that we do work with a number of human rights lawyers. So the misconceptions that are identified are certainly ones that we believe are, and they're not the party line. I understand that you might perceive that. I have met Mr. Bryant, our Attorney General, as I have met many of our ministers, and I guess I do have some faith in this government. So I do stand by those.

I note as well, in my work with DAWN, the DisAbled Women's Network, and cross-sectorially, a number of other organizations do have concerns. These are what we're saying we believe are some misconceptions that

are out there. With strengthening the bill with the amendments that we have suggested, then I think that it can be a strong bill.

Mr. Kormos: Ms. Ball, that's embarrassing.

Ms. Ball: Actually, I don't think that it is.

Mr. Kormos: I believe it is.

Ms. Ball: Well, I believe it.

The Chair: Mrs. Van Bommel?

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you for your presentation. Being an MPP in a rural area and the kinds of issues that we have faced in our communities in terms of access and helping women who are abused to make their way to transition homes and to shelters, I can only imagine what it's like for you to provide these kinds of services in northern areas.

One of the things that we have heard, and you bring it up here as well, is the whole issue around sexual harassment, the impact on women and the struggle that women have in trying to bring those issues to the Human Rights Commission. What experience have you had here in terms of women who try to bring their issues forward and the length of time that it takes their whole issue around going through the double process of commission and then tribunal, the time and the intimidation—I shouldn't even put that word in there—but their state of mind going into this and the length of time that it takes? Do you find that women are discouraged by the fact that they can't have direct access to a tribunal?

Ms. Ball: I think absolutely that they're discouraged from that. When women are in crisis, when they have left an abusive situation, there are many things going on in their life, so if they can't get or have a thought that there is a speedy remedy—and I don't mean speedy in 10 days—that there is a process that will engage them, that will have their voices heard, where they will be empowered, I think it's the length of the process that really discourages them, and also it just delays the healing process. It takes so long when we're working on other aspects of their life that, even when they're strong enough and capable of doing that, it's still just too lengthy and too ominous for them to really engage in.

The Chair: Thank you. Mrs. Elliott.

Mrs. Elliott: Ms. Ball, you stated at the beginning of your presentation that you support Bill 107, yet we have 10 or 11 pages of proposed amendments that you present to the bill that in my view fundamentally change the character of this bill. For example, you state at the beginning that everyone is guaranteed a hearing at the tribunal. In fact, that's not the case at all. The legislation doesn't say that, and you're recommending that that be changed; similarly with the commission, that the commission needs to be strengthened to allow it to continue its advocacy function. In fact, most of the powers of the commission are being taken away. So I find it really hard to understand how you say that you can support this bill when you are recommending sweeping, fundamental changes to it.

Ms. Ball: I think I've spoken to that in my presentation, that there are a number of amendments that we do recommend before supporting the bill.

The Chair: Thank you very much.

CANADIAN HEARING SOCIETY,
THUNDER BAY REGION

The Chair: The next group is the Canadian Hearing Society. Good morning. Welcome to the hearing. You may begin.

Ms. Nancy Frost: Good morning. My name is Nancy Frost. I am regional director of the Canadian Hearing Society, Thunder Bay region. With me was going to be Karen Higginson, who unfortunately, due to ill health, was not able to be with us. I will do my best to share her experiences and those of other persons who are culturally deaf or have some degree of hearing loss with respect to the existing human rights process and what is being recommended in the bill.

This morning I will briefly share with you the key concerns and recommendations of the Canadian Hearing Society with respect to Bill 107. Karen was going to be providing her perspective but is not able to do so. I will attempt my best to provide that perspective this morning. You have each been supplied with a copy of our presentation.

I would like to preface the presentation by stating that 23%, or one in four individuals, report having some degree of hearing loss or are culturally deaf.

This presentation is attempting to represent their issues and concerns. Our presentation today will focus specifically on what human rights protection means to this population, what their current experience is and what changes must be made to Bill 107 before third reading to guarantee that their human rights and its process are void of any discrimination and barriers.

The Canadian Hearing Society is the largest agency of its kind in North America serving culturally deaf, deaf, deafened and hard-of-hearing people and their families. We are a multi-service agency, founded in 1940, that offers 17 different programs to address a broad range of hearing health care and social service needs, working in consultation with national, provincial, regional and local consumer groups and individuals.

In general, the Canadian Hearing Society is pleased that the government wants to improve and strengthen the Ontario human rights system, which is currently inaccessible, underfunded and backlogged. However, having said that, the Canadian Hearing Society has very serious concerns with the direction of the government's reforms set out in Bill 107 and with the process by which this bill has been brought forward.

Although the presenter prior to me stated that there was ample public consultation, I must dispute that and state that we deeply regret that the Canadian Hearing Society and our consumer groups were not consulted by the Attorney General before he announced his plans for reforming the Human Rights Code. We also regret that the government did not take up a proposal to hold an open, fully accessible public consultation before introducing Bill 107, as was done with respect to Bill 118, the

Accessibility for Ontarians with Disabilities Act. Our primary recommendation, therefore, is that the government start over again with designing reforms to the overall human rights system.

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Should the government, however, decide to proceed with Bill 107, we now offer the following recommendations, highlighted from those set out in the AODA Alliance draft submission, which the Canadian Hearing Society endorses.

In general, Bill 107 should be amended to ensure that it does not take away any rights now guaranteed under the Human Rights Code; that it does not breach the government's promise to Ontario's disability community for a strong and effective enforcement mechanism to support the Accessibility for Ontarians with Disabilities Act, namely the continued availability of the Ontario Human Rights Commission's investigation and enforcement powers.

Without taking away from the many important recommendations for amendments set out in the AODA Alliance's draft submission, the Canadian Hearing Society specifically draws the committee's attention to these recommended amendments. I have six listed.

(1) Individual choice: Complainants should and must have the right to choose to either take their case directly to the human rights tribunal or to opt for the human rights commission to investigate their case and to prosecute if evidence warrants.

(2) The human rights commission's powers must not only be maintained but also enhanced. The commission's investigative and enforcement powers should be maintained and its powers strengthened to monitor and enforce tribunal orders, and to plan for removal and prevention of barriers in the human rights process.

(3) The removal of barriers: The bill should be amended to protect discrimination victims from financial barriers, such as user fees under section 45.2 and legal fees. The bill must also provide resources, funding and processes to ensure that the system itself is barrier-free.

(4) Grandfathering: The bill should be amended to ensure that cases now in the human rights system are completed under the current code and do not have to start all over under Bill 107.

(5) Independent enforcement agency: If the Ontario Human Rights Commission's full mandate over investigation and prosecution in any case involving disability rights is not preserved, the bill should be amended to establish a strong, effective, independent enforcement agency under the Accessibility for Ontarians with Disabilities Act, including the power to receive, investigate and prosecute disability discrimination cases.

(6) The bill should be amended to give the Disability Rights Secretariat and the Anti-Racism Secretariat meaningful enforcement powers that have existed under other departments within the Ontario Human Rights Commission and sufficient staffing and funding to fulfill this mandate.

It was at this point that I was going to have Karen Higginson speak to you about her real-life experiences

and those of other culturally deaf persons and persons with various degrees of hearing loss. We do have individuals such as that in the audience currently, but because this process has not been accessible, meaning that there has not been a presentation of material in an accessible format, they have not been apprised of the bill nor the opportunity, as Karen had, to meet with me at great extent to review the bill and to prepare our presentation. On Karen's behalf, I will attempt to do my best to represent her issues.

For culturally deaf, deaf, deafened and hard-of-hearing complainants and respondents, full participation in the human rights complaint process is fundamentally linked to ensuring clear, accurate, professional two-way communication. When the appropriate accommodations are not in place, full participation by this population is in fact compromised.

If we did not have today professional sign interpreters and professional captioning, one out of every four Ontarians would not be able to participate in this session. That is access.

For someone such as Karen who is culturally deaf, linguistic access is required, examples being qualified sign language interpreters, plain-language documentation and English comprehension assistance. That is access and accommodation.

For persons with various degrees of hearing loss, their requirement is communication access; for example, real-time captioning, computerized note-taking or an accessible physical environment. It is these communication and language accessibility and accommodation requirements that are limited or void in the current human rights system. It is these accessibility and accommodation requirements that must be guaranteed.

To support our key recommendations that I earlier mentioned, Karen was going to be sharing with you specific examples of major accessibility barriers and gaps that are faced by persons who are culturally deaf or have various degrees of hearing loss.

The first example is that there are no clear policies and procedures for providing said access and accommodation, even though the Supreme Court of Canada, which supersedes the Ontario Human Rights Code, guarantees equal access; even though the Accessibility for Ontarians with Disabilities Act was implemented to ensure that communication and language access is in place. We are looking at a bill that is going to be taking away human rights protection as guaranteed by the Supreme Court, as guaranteed by Bill 117. Who will be investigating and enforcing the removal and prevention of barriers? By weakening the Ontario Human Rights Commission, you weaken the AODA.

The lack of funding for communication and linguistic access accommodations is a huge concern. With no or limited access, one out of four Ontarians is not able to participate in the process. They would thus remain a victim of the process itself.

Insufficient funding and staffing levels: The current backlog has forced some complainants to hire their own

lawyers at their own expense. I wish to state that due to very high unemployment and underemployment rates, lower income levels, low level of education and low literacy levels experienced by persons who are culturally deaf or have some degree of hearing loss, they cannot afford to hire and pay for their own lawyers. The system thus will not be accessible for them.

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The elimination of investigations by the publicly funded commission and legal representation by a lawyer, as proposed in Bill 107, will create a serious barrier for complainants who are deaf or have some degree of hearing loss. Without this, many may choose not to proceed. Many will thus remain marginalized and victimized.

Many legal aid services across Ontario will not take on human rights cases, leaving these complainants with no representation when trying to fight big companies or governments.

Lack of availability of sign language interpreters and real-time captioners and lack of accommodation regarding the booking of said services result in unnecessary delays in the handling of human rights complaints. Wait times for these consumer groups are often longer than average.

The inability of most legal aid clinics, legal clinic offices, lawyers and paralegals to assist deaf, deafened and hard-of-hearing individuals who have limited English literacy skills and do not understand the intake forms is a regularly experienced barrier.

Communication and linguistic barriers are experienced from the very beginning of the human rights complaints process to the very end. That must be addressed. To not address it is to not make your system accessible to one out of four Ontarians.

We need and ask for a bill that will enhance, not take away, the human rights system by addressing these gaps and barriers. We do not need a bill, such as the proposed Bill 107, that will make it more difficult and more terrifying to fight for what is legally ours.

Many persons who are culturally deaf or have some degree of hearing loss cannot afford to pay for their own lawyers, have no experience using the human rights system, and would experience undue emotional trauma having to proceed alone with additional expense and having to individually face the person or organization that discriminated against them.

This is not a system that will protect and guarantee our human rights. We ask you to amend your bill to do so.

In conclusion, the Canadian Hearing Society strongly endorses the immediate need for establishing an enforceable and effective Ontario human rights amendment act. Bill 107 needs to include an enforcement mechanism, quality assurance and sufficient resources to ensure that qualified accommodation measures are available, such as interpreting, captioning and deaf-blind intervening. The legislation needs to have authority and be suitably funded so that proper systems can be set up to monitor and enforce the Ontario human rights system by strengthening the Ontario Human Rights Commission.

Bill 107 will clearly be inadequate unless amendments as recommended by the AODA Alliance are made before third reading. Bill 107 falls significantly short of what is needed to strengthen and improve the effectiveness of the Ontario human rights system.

The Canadian Hearing Society is prepared to work very closely with the Ontario Human Rights Commission or any future human rights system to develop appropriate policies and provide awareness training for human rights personnel to ensure that culturally deaf, deaf, deafened and hard-of-hearing individuals can be full participants in any human rights proceedings in which they are involved.

Thank you for this opportunity.

The Vice-Chair (Mrs. Maria Van Bommel): We have about four minutes for each party to ask questions or make comments. We start with the government side.

Mr. Berardinetti: We want to thank you for your presentation today, Ms. Frost. The information is quite valuable, and we will take it into consideration. A copy of it will be given to those who are still working on this bill, and we will be going through it clause by clause. My gut feeling is that there will probably be some changes made to the bill before it reaches its final form. How far that goes remains to be seen, but we thank you very much for your presentation here today. On behalf of the government members, thank you.

Ms. Frost: Can I ask a question? Will we be able to see the amendments or the draft amendments and be allowed an opportunity to provide feedback?

Mr. Berardinetti: I don't know if I'm allowed to answer that, Madam Chair, but I know that we do the clause-by-clause in Toronto. We haven't set those dates yet, but it is going to be in a committee format that we go through that clause-by-clause debate. But that's still to be determined.

Mr. Kormos: I'll answer that, Chair.

The Vice-Chair: Certainly, Mr. Kormos, but first we'll move to Mrs. Elliott, the official opposition member.

Mrs. Elliott: I'd simply like to thank you, Ms. Frost, for your presentation on behalf of the Canadian Hearing Society. You've raised some significant concerns which many of us share, and we hope that we will be able to convince the government to make amendments along the lines that you've suggested.

The Vice-Chair: Mr. Kormos, third party member.

Mr. Kormos: Thank you, Chair, and thank you, ma'am. If the government wishes or wants to have you see the amendments before they are put before the committee, it can. It remains to be seen whether or not it will. Unfortunately, that is probably not within the—I know it's not within the power of the committee members, for whom I have great regard, but it's the decision of the Ministry of the Attorney General itself. Unfortunately, the practice is to write the amendments in relative secrecy and then, boom, they're before the committee. If they are government amendments, they tend to get passed, because the government has the majority. If they

are amendments—notwithstanding that they are based upon the careful consideration of any number of persons or groups that appear before the committee—that are sponsored by the opposition parties, that's usually an indicator that they will fail, although from time to time the government will set up an amendment with an opposition caucus to make it appear as if the government is listening to everybody. But that's just part of the political game.

At the end of the day, although in one respect it's up to the government, it's really up to the committee. This committee can send whatever bill it wants back to the House for third reading. This committee is an incredibly powerful body. This committee can accept any amendment it wants; it can reject any amendment it wants. This committee could create the dual-stream model that AODA proposes and that you endorse. That seems to me to provide direct access to the tribunal for those who can afford it, who wish it and who want the expediency of it, but also to preserve the very important advocacy and investigative role of the commission for more vulnerable, less powerful, less prosperous victims of human rights.

I don't suspect you of having any misconceptions about the existing system or about the bill, unlike some other participants in these proceedings. I think yours is—like so many others, many of whom disagree with you—a valid proposition. It's up to the members of this committee to use their judgment to earn their paycheques and decide whether or not your proposal is going to be in the bill that's reported back to the House. It's a matter of whether the members of this committee listen to the people of this province or whether they listen to their political bosses in the Premier's office. I think it's as simple as that.

Thank you, ma'am.

Ms. Frost: Thank you, everyone.

The Vice-Chair: Thank you, Ms. Frost.

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GREG SNIDER
SANDRA SNIDER

The Vice-Chair: Now we will hear from Greg Snider and Sandra Snider. Thank you very much for coming this morning. You have 20 minutes. You can use the entire 20 minutes to make your presentation or, if there is any time remaining after you finish, there will be opportunity for questions and comments by the members of the committee. If you would please start. Thank you.

Mr. Greg Snider: I'll probably check at the end of my rough spiel here and see how much time is left, and I might take a little more time.

The Vice-Chair: It's totally up to you.

Mr. Snider: Hello. I am Greg Snider, and with me today is my wife, Sandra Snider. Sandra and I are both active members of our union, OPSEU, the Ontario Public Service Employees Union. Sandra is the northwestern region representative on the provincial women's committee and president of Local 736. I am chair of the

provincial human rights committee and co-chair of OPSEU's disability rights caucus. We are both active members of Westminster United Church. Sandra is also an active member of the Lakehead Board of Education's special education advisory committee and the Learning Disabilities Association of Thunder Bay.

We applaud the government for having the courage to try and fix a badly backlogged system. Sadly, the effort being made by this government will not fix the problem. Either it will transfer the backlog to the tribunal doors or, worse, clear the backlog by discouraging legitimate complaints from being filed. In addition, the bill in its current form violates a promise this government made to the many persons with disabilities living across Ontario.

Mrs. Sandra Snider: Although it is our view that there are several problems with Bill 107, we intend to concentrate on the two above-mentioned items.

First, we would like to discuss the financial barriers to access to justice. We recognize that the minister has clearly stated that the new legislation would establish a system of full access to legal services for all, regardless of income. However, there is only permissive reference to these kinds of services in the legislation. This in itself would lead one to question the legitimacy of the promise, but this in addition to the knowledge of how much that kind of legal commitment would mean for the coffers of the Ontario government leaves one no choice but severe skepticism. With apologies to our friends in the Liberal Party, I do not for a second believe that this promise will be kept. This would create a huge increase in the cost when compared to the current system, and the government has already been unwilling to address the current underfunding of the Human Rights Commission for nearly a decade. In fact, it is my understanding that one of the last significant changes to the commission prior to the bill was to lay off intake staff. There is no question that this move was both a great savings to the government as well as an indication that access to justice and legal supports is not a priority of this government.

Without guaranteed access to lawyers for all citizens, those faced with discrimination will have to make a financial decision. They will have to put a price on the right to equality and human rights protection. Certainly, many will not go forward.

This represents only the beginning of the financial barriers that exist within Bill 107. A far greater financial barrier to filing a complaint is the exposure of a complainant to the possibility of paying his opponent's legal costs should he lose. Not only do possible complainants have to consider the cost of their lawyers, but now they have to consider the possibility of having to pay the costs of the much larger, more expensive lawyers of their opponents. Although this may be seldom used by the tribunal, my years as a labour activist tell me that it will be a weapon frequently used by defendants with power prior to the hearing. With a whisper here, a comment there, the message will be delivered.

As a final financial barrier, this bill allows the Human Rights Tribunal to charge fees for services of the tri-

bunal. This series of legislative amendments demonstrates that the government has indeed taken a stand on human rights. That stand is that fighting for one's human rights comes with a price, and the victim should be paying at least part of that price. We disagree.

Mr. Snider: Turning to our second major criticism, the last time I sat before a commission to make a presentation, it was on the Accessibility for Ontarians with Disabilities Act. At that time, I expressed a great deal of skepticism about what would be put in place to enforce the Accessibility for Ontarians with Disabilities Act. The government was very clear that the tool of enforcement would be the Human Rights Commission. When the Ontarians with Disabilities Act Committee fought to have an independent enforcement agency created to implement this act, they were told that no such agency was needed because the Human Rights Commission would fulfill that role. But now there will be no enforcement role for the Human Rights Commission. When I spoke on the Accessibility for Ontarians with Disabilities Act, I was told by two Liberals not to worry, that there would be enforcement. Mr. Gravelle, a man I have a great deal of respect for, told me I was being needlessly cynical. Clearly, my worries were not needless.

Bill 107 does set up a disability rights secretariat, but with no power to investigate or prosecute, it will be of little help to the Accessibility for Ontarians with Disabilities Act or those facing barriers to accessibility. The secretariat will make recommendations that may or may not be followed, it will do as much public relations as the government of the day decides to fund under that year's budget, and on occasion it will respond to the wishes of the chief commissioner as he responds to the minister. But that's all.

We have a union sister who is currently sitting on one of the advisory committees set up under the AODA, and I spoke with her about how her work on the committee was going. I was astounded to hear that she was spending a lot of time arguing with other members that the Human Rights Code does apply when setting the standards. That's a very scary thing when you add that to the fact that you're not going to have the enforcement tool that was promised to us.

Bill 107 will require victims of those violating the Accessibility for Ontarians with Disabilities Act to purchase their own enforcement officers and prosecution staff in order to enforce the law, with the exception, of course, of those already living in or near poverty. Under the current system, the Human Rights Commission has the power to investigate a complaint and to represent the complainant without cost to the victim.

Why is the government so determined to throw out the very best parts of the commission? In our view, this bill should be scrapped and a new, more inclusive, ground-up process should begin. Everyone agrees that the commission needs to be fixed, but the key is maintaining the best parts and the most important roles.

If the government decides to go forward with these amendments, we want to express our strong support for

the recommendations put forward by the Accessibility for Ontarians with Disabilities Act Alliance, the most important of which, in our view, is to give people the option to take their case right to the Human Rights Tribunal or to opt for the Human Rights Commission to investigate their case and to prosecute if evidence warrants.

Mrs. Snider: The fifth recommendation, to strengthen, not weaken, the commission's enforcement powers, including expanding its role to monitor and enforce tribunal orders, and to plan for removal and prevention of barriers in the human rights process, would take the government a long way towards meeting the commitments it made with the passing of the Accessibility for Ontarians with Disabilities Act.

We would finally encourage the government to re-invest in intake processes at the stage where complaints are processed. The average person currently accessing the commission requires skilled assistance in filing and drafting complaints. Many complaints are rejected on the basis that they do not substantiate a human rights claim, either because they fail to outline what part of the code is violated or they fail to outline relevant evidence that validates their claim. The ability to connect very painful and emotional experiences with the requirements of the Human Rights Code is not an easy task and requires the assistance of culturally and language-sensitive intake staff.

Mr. Snider: With that, I want to thank you very much. How much time do I have left?

The Chair: You have about four minutes for each side, so 12 minutes.

Mr. Snider: Maybe if I can very quickly mention a few things before I do questions. I have a couple of people I know who have brought cases forward and several that have been settled. John Rae has taken the Ontario Federation of Labour to task and won his case, and Carol, a friend of mine, took the banks to the Human Rights Commission. She is blind and has a Seeing Eye dog. She couldn't access the banking machines, and she used to have to ask people to help her with the banking machines and give them her code in order to get money out of the machines. It's just not a good thing to be doing, right? So she took them to task and said, "You know, you can set these up so that we can use them." The settlement that came out of it was that all new banking machines have to have earphone plug-ins so blind people can plug in earphones and the machines will talk to them and they can do those functions. That's a case where the commission has actually worked.

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I wonder if these cases would go forward now. Carol is employed. She's a legal aid worker. Brother John is an OPSEU member. I think he's retired now. Would these people take their cases forward if they knew they might have to pay up front for lawyer costs or if they had to pay some other fee? The government says that they're going to pay for people to have a lawyer, but you're not paying for the commission now. The commission is underfunded now, so where's this extra money going to come from? I

don't see governments spending more money these days. So I see these two cases not going forward.

The last thing, because I've heard some talk about us being from OPSEU and there may be some commission staff there: The reason I am speaking as an individual is because OPSEU has been on the receiving end. A complaint had been filed with the Human Rights Commission—it was since withdrawn—against OPSEU by one of its members, and I felt more comfortable coming here and speaking as an individual towards this because for me, it really is about human rights for individuals and about persons with disabilities getting representation. Persons with disabilities represent close to 50% of the complaints heard by the Human Rights Commission. It's interesting that today we've had four presenters so far, and the three people who are representing groups with disabilities had significant concerns about the bill or were saying that it should be withdrawn. I think that's significant.

The Chair: We'll begin with the official opposition.

Mrs. Elliott: Mr. and Mrs. Snider, I was not a member of the Legislature when the Accessibility for Ontarians with Disabilities Act was passed, but I can tell you that I've heard from many, many people. We've heard presenters in all three locations tell us about the representations that were made to them with respect to the enforcement powers—that the commission would be able to enforce the act—and about how betrayed so many people in groups feel that that hasn't happened. For the life of me, I don't know why. It seems to be taking the opposite direction, both with respect to the powers of the commission and its ability to represent people and continue to play the investigative role that it has traditionally played, and with respect to the whole issue of legal representation now directly before the tribunal. These are valid questions. They're hard questions that need to be asked, and believe me, we're taking them very seriously at this committee level and we will be following them. Thank you very much for coming before us today.

The Chair: Mr. Kormos.

Mr. Kormos: I know Mr. Zimmer is chomping at the bit, so I'm going to try to be as prompt as I can. It was interesting, because you talked about how the OFL and OPSEU have been the respondents in complaints. I think one of the things we have to understand is that it's not necessarily, nor should it be, a source of shame to be called by the commission with respect to a human rights complaint. There are egregious and incredibly cruel, conscious breaches of human rights and then there's a whole other range of breaches that result from ignorance, lack of awareness, insensitivity. I'm increasingly impressed with the AODA proposal, which you endorse, for the dual track because, although I'm not one of those who would suggest that ADR, including mediation, is the solution for all disputes, it is an effective tool, especially when you have discriminatory behaviour that's a result of ignorance, that's a result of insensitivity, that's a result of lack of knowledge. It seems foolish to draw that respondent into a litigious tribunal where people resist, people

fight back—the lawyers here who do civil litigation will know that—people defend themselves, when in many cases of discrimination, I'm sure victims would acknowledge as well, it's a simple matter of bringing those people into a forum like the office of a mediator to resolve the differences of perspective and move ahead. I'm impressed increasingly—and I didn't think I would be—although I'm not 100% committed yet to the prospect of maintaining that important commission role.

The fact is that the litigious process—and let's not deny ourselves the reality: the tribunal is a court-style forum. It means lawyers—big-bucks lawyers, if you can afford them. It means using all the legal rules—and we know about those—to get the application tossed out, to get it dismissed before it's even heard on the merits, and all the pettifoggery that skilful lawyers sometimes use. I'm anxious to get to Mr. Zimmer, but I'm increasingly impressed with the dual model that seems to be a compromise position as well. Is that fair?

Mr. Snider: As I said, part of my role on the provincial human rights committee for OPSEU is also being an adviser under our harassment and discrimination policy. Part of that role—when we come into these, quite often they're much smaller cases, but people are harassing somebody else's human rights. We sit down—there's a big education role that's involved in that—and we try to educate and to resolve those issues, not through a confrontational format but being able to bring the people together and getting them to understand where other people are coming from and what situation they are in in their lives and that kind of stuff. I think that's part of what the commission provides at the tribunal.

If you just simply go to the tribunal, you're absolutely right, it's going to be a confrontational situation with lawyers who in some cases—not in all cases, but some—are going to see it as a chance: “The longer the conflict happens, the longer the debate takes place, the more money there is for us to make out of it.” I think that's not productive towards solving human rights issues. Human rights issues are really about educating people more than anything else.

The Chair: Thank you, Mr. Zimmer.

Mr. Zimmer: I've made a note of Mr. Kormos's observation here, that he's “increasingly impressed” by the dual model. So I'll just make a note there.

Mr. Kormos: You didn't have to write it down; Hansard has it.

Mr. Zimmer: Yes, all right.

You made reference to an OPSEU member who actually filed a complaint against OPSEU. I note, Sandra, you're the president of Local 736, and, Greg, you're the chair of the provincial human rights committee, so I guess you're the appropriate person to ask this question of. OPSEU, in fact, has a direct access model, so the complaint that you referred to—and I don't know the substance of the complaint filed by a member—went directly to a tribunal-like body rather than through some overarching organization. OPSEU has its own direct

access model, so there must be some merit to the direct access model.

Mrs. Snider: I think you're mistaken. Our process isn't a direct access model. Our first step to resolve any issues between the employer and an employee is in the workplace. We do that first and then we go through to the ministry level. We don't go to a tribunal until the third step. We try and resolve as many issues as possible before we ever get there.

Mr. Zimmer: But the complainant can take their complaint directly to a tribunal.

Mrs. Snider: No.

Mr. Snider: No. This went through the Human Rights Commission. It was withdrawn at the Human Rights Commission level, through the negotiation process that happens at that level.

Mr. Zimmer: No, but the point is, the complainant doesn't need the authority of some über-body in OPSEU to proceed with their complaint. They can push the complaint themselves—direct access.

Mr. Snider: If you're filing a complaint against OPSEU, you wouldn't want to get permission from OPSEU to do it. They probably won't give it.

Mr. Zimmer: And that's exactly the model that we have with our dual system that Mr. Kormos is becoming increasingly impressed with.

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Mr. Snider: I don't think there is a dual—the Human Rights Commission under your policy isn't going to do any investigation or any—

Mr. Zimmer: Dual model.

Mr. Snider: There isn't a dual model under this, not for investigating.

Mrs. Snider: But it doesn't matter who you are, whether you're a unionized employee or anyone. Human rights have to be accessible for everyone and we're not seeing that this bill is going to do that.

Mr. Snider: The reality is, in the case that we talked about, this person is employed. Because of his position with the government—I don't want to say all OPSEU members have really good-paying jobs but we're certainly better than the rest. In this particular case, he has a good-paying job, and I find it very difficult to believe, under a situation where you are underfunding the Human Rights Commission right now, that you're going to pay for lawyers to represent him. He simply is not going to get lawyer representation. And is he going to bring forward his case when he has to pay for a lawyer? I think he's not going to. There's nothing in this act that says you're going to pay for a lawyer, and the added cost that's going to be for you to supply lawyers to every single person who brings forward a complaint is going to make you unable to fulfill that role. It simply isn't going to happen.

Mr. Zimmer: Well, I look forward to a close examination of OPSEU's direct access model. Thank you.

The Chair: Thank you very much for your presentation today.

KINNA-AWEYA LEGAL CLINIC

The Chair: Next, we have the Kinna-aweya Legal Clinic. Welcome to the committee. If you can just state your name for the record.

Ms. Sarah Colquhoun: Thank you very much. My name is Sarah Colquhoun. I'm the coordinator of legal services at the Kinna-aweya Legal Clinic. Thank you for the opportunity to appear before the committee today.

Kinna-aweya Legal Clinic is funded by Legal Aid Ontario to provide legal services to low-income people in the district of Thunder Bay. We were established in 1978 and we provide services primarily in the areas of income maintenance, which would include welfare appeals, disability appeals, Canada pension, employment insurance, all the government—too fast?

The Chair: Yes.

Ms. Colquhoun: Sorry.

The Chair: Thank you.

Ms. Colquhoun:—all the government income maintenance programs that have appeal processes if people aren't receiving the benefits that they should and housing issues. In addition to summary advice and ongoing case work, we are involved in public legal education, law reform activity and community development.

In terms of our experience with respect to human rights, our legal clinic has in recent years rarely assisted clients with human rights complaints at the Ontario Human Rights Commission. This is true for several reasons.

Since the commission closed its Thunder Bay office several years ago, human rights issues have had much less of a profile in the community and fewer clients come to the clinic wanting to pursue a human rights complaint.

Over the years, our clinic has had to narrow our case-opening criteria because of a steady increase in requests for service with no increase in our resources. So our primary case types now are income maintenance and housing issues, if people are being evicted or not getting social assistance.

The human rights complaints process is extremely lengthy and provides little practical benefits to a complainant who, for example, has been refused housing because of racial discrimination. In most cases, the claimant has no right to a hearing of their complaint. Sometimes we will recommend to people that they raise human rights issues in another forum, such as the Ontario Rental Housing Tribunal or the Social Benefits Tribunal, because they would then have the right to have the issue adjudicated in an open, transparent hearing and in a timely fashion.

The absence of an effective human rights process under the code for our clients and the resulting use of an alternative process may mean that their human rights issue is not appropriately dealt with in the broad public policy context that is the hallmark of a properly litigated human rights hearing.

The Kinna-aweya Legal Clinic supports Bill 107 because, for the first time in Ontario, human rights claim-

ants would have the right to take a discrimination case to a hearings tribunal without first having to undergo a lengthy and delayed process to obtain permission from the Ontario Human Rights Commission. As you know, the commission currently dismisses many more complaints than it allows to proceed to a hearing. The dismissals take place in a behind-closed-doors process, with the claimant never having had the opportunity to tell their side of the story in an open hearing. The process can be patronizing and alienating for claimants, who find it difficult to understand how it can be fair for their complaint to be dismissed without any opportunity to explain their story to the decision-maker. Because the commission no longer has an office in Thunder Bay, often complaints are dismissed not only without a hearing but without the complainant even having spoken face to face with anyone about their complaint. Matters are dealt with by telephone and fax and not in person.

Under Bill 107, our clients will have the same right to conduct their own human rights case as they already have in making any other kind of administrative or civil claim, such as a claim for employment insurance, workers' compensation, social assistance, maintenance of rental accommodation and so on. A claimant with a human rights complaint for the first time will be able to decide for themselves whether to proceed to a hearing or to mediation at the tribunal. A claimant will no longer have to persuade the commission, acting as a gatekeeper to the hearing process, that their case is an appropriate one to go to the tribunal or that a settlement offer at mediation is inadequate. Once at the tribunal, the claimant will have carriage of their own complaint and will no longer have to sit back while the commission controls the conduct of the case before the tribunal.

The ability to control your own case is one which is uniquely denied to human rights claimants under the current system. I think it's important to note that in terms of representation, when there's a lawyer from the commission presenting a case, they are not representing the claimant; they are representing the commission and they're presenting the case on behalf of the commission, not the complainant. In a recent issue of the newsletter of ARCH Disability Law Centre, noted disability rights activist Catherine Frazee explained in an interview how it is patronizing and disempowering for claimants to have the status of bystander in the conduct of their own discrimination claim at the tribunal.

Bill 107 is not perfect, by any means. We certainly have recommendations for improvements. The first recommendation we would make is that the limitation period to file a complaint be extended to at least two years, which is pretty much the standard limitation period for civil actions in Ontario these days. Six months is simply too short.

The second recommendation we would make is that there not be any fees associated with a complaint to the tribunal. Accessibility of the tribunal to our client constituency demands that there not be any fees associated. We would prefer to see a system continued where

there are no fees, rather than a system with fees with possible waivers for low-income people, because we find that any kind of fee is going to be a disincentive to our client constituency.

Section 46.1 of the bill allows for the establishment of agreements to provide legal services to assist claimants in proceedings before the hearings tribunal. Our office takes the position that this provision as currently drafted falls short of the promises made by the Attorney General at first and second readings. We're calling on the government to amend the bill to include language to establish the legal support centre for claimants and to ensure that it receives adequate funding. Our position is consistent with the promise made by the Attorney General in the Legislature on June 10, 2006, when he undertook to introduce amendments to the bill to set out more clearly the role and mandate of the new centre.

We applaud the government's promise to ensure that claimants are appropriately supported in the new human rights regime. The amendments to the bill should be consistent with the comments made by the Attorney General in the Legislature, to the effect that the government will establish a new human rights legal support centre as a "critical component" of the human rights system. The new centre, the minister indicated, would "provide information, support, advice ... and legal representation for those who are seeking a remedy before the tribunal" and "would ensure that, regardless of levels of income, abilities ... or personal circumstances, all Ontarians would be entitled to share in receiving equal and effective protection of human rights, and all will receive that full legal representation."

We note that Legal Aid Ontario has initiated an internal consultation at the request of the ministry with respect to the question of whether community legal clinics and other legal aid providers will have some role in delivering the services through the legal support centre. We would note that our office and our services are already overburdened. Our clinic would not be able to provide any significant additional legal services to human rights claimants without receiving additional funding for that purpose. Our clinic is under the direction of a community board of directors, and any decision to participate in the provision of legal services to human rights claimants would be up to the directors of our clinic.

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Whether it is through Legal Aid Ontario or some other mechanism, it is vitally important that services through the legal support centre be provided in person and through accessible, appropriate venues throughout the province. The increasing reliance of government offices on Internet access and toll-free phone numbers to offices in Toronto has resulted in the steady erosion of the level of services available to low-income citizens throughout the rest of Ontario.

In terms of the role of the Human Rights Commission if this new regime does come forward, we would support the commission taking an enhanced role in public education and setting community standards of non-discrim-

ination. Under the current system, we would submit that the commission is not effective as an advocate against discriminatory practices because it's overburdened with the need to investigate and dismiss or refer every complaint that is made.

We support the commission's ability under Bill 107 to bring its own application or to intervene in any case where there's a broader public interest. We submit that the language in section 36 of the bill is unduly restrictive in limiting the commission to applications in cases of systemic discrimination. We would suggest that it should be broadened to any issue that's of broader public interest.

We would also like to see Bill 107 amended to restore the commission's investigative powers, as currently set out in section 33 of the current legislation. The commission would no longer investigate every complaint, because under the new regime the commission would only be using its investigation powers in cases where it's bringing its own application or intervening in a case filed by an individual that has a significant public interest aspect. Nonetheless, it's important that the commission retain its investigation powers to facilitate an effective investigation in respect of those cases in which it has identified a broader public interest.

The Human Rights Tribunal should be an expert tribunal with a duty to decide on the real merits and justice of the application. We would recommend that the bill be amended to include language similar to that found in the Canadian Human Rights Act that requires adjudicators to have experience and understanding of human rights issues. We've certainly seen situations in other tribunals that we deal with where people are appointed purely on the basis of political connections, which is very unfortunate in many cases—not all cases, certainly. We would ask that the legislation be amended to require that people appointed to this tribunal have interest, knowledge and understanding of the issues that they will be dealing with.

We're also concerned that subsection 37(2) of the bill may place too great an emphasis on the tribunal following the "most expeditious" process of disposing of an application on its merits. In our experience with other tribunals, "expeditious" disposition of applications often means that emphasis is placed on dealing with a matter quickly rather than fairly. We would recommend that the language in the bill be amended to provide that the tribunal is required to decide every application in an efficient manner but in accordance with the real merits and justice of the case. Again, one of the things we're seeing with other tribunals that have a focus on dealing with matters in an expeditious way is telephone hearings where you don't have any face-to-face contact with the adjudicator and that kind of thing. It's a problem for those of us in the north and in more remote areas.

We are very supportive of the initiative of the Attorney General to move forward with long-overdue reforms to the human rights enforcement process. I'm sure that everybody who has appeared before you has been unani-

mous that there are serious problems with the system as it is now.

There are opportunities and risks for our clients in any change of the magnitude proposed by Bill 107. For our claimant communities, the success or failure of the proposed amendments will rest, to an enormous extent, on the willingness of the government to adequately fund the new human rights legal support centre. Again, one of the distinctions will be that the lawyers in the human rights resource centre will be representing the claimants, not the commission.

Almost as important will be the openness of the tribunal to hear and consider the input of legal clinics and other claimant-sided counsel when they're developing the new rules and procedures of the tribunal. Finally, the success of the new system will also depend on the extent to which the Human Rights Commission embraces its new mandate enthusiastically and effectively. I've provided a summary of the recommendations.

Those are our submissions. Before we get to the questions, I have been asked to provide submissions on behalf of a number of other legal clinics which were not able to attend the hearings in Thunder Bay since these were the only hearings scheduled in northern Ontario.

I have a submission from the Algoma Community Legal Clinic in Sault Ste. Marie that endorses the joint submission prepared on behalf of legal clinics but also raises several regional issues, making sure that there are no fees or costs and extending the limitation period. I also have letters from a number of other legal clinics addressed to the committee, endorsing the joint submission of the legal clinics.

I have the letter from the Lake Country Community Legal Clinic in Muskoka endorsing the joint legal clinics' submission.

I have a letter from the Manitoulin Legal Clinic on Manitoulin Island endorsing the joint clinics' submission.

I have a letter from the Kenora Community Legal Clinic endorsing the joint clinics' submission.

I have a letter from the Sudbury Community Legal Clinic endorsing the joint clinics' submission.

I have a letter from Keewaytinok Native Legal Services in Moosonee endorsing the joint legal clinics' submission.

I apologize to the clerk; I don't have additional copies of those documents. Thank you.

The Chair: Thank you very much. We have a little bit over five minutes each. We'll start with Mr. Kormos.

Mr. Kormos: Thank you, Ms. Colquhoun. It comes as no surprise that the legal clinics at this point support the legislation but for their concerns. I understand that. I do want to compliment you on the submission because you make your case without diminishing or attacking contra views, and I see that as an admirable approach to the matter.

I am concerned, as are you, about the so-called expeditious disposition, not only with respect to subsection 37(2) but with respect to clause 34(2)(b), where the tribunal is going to have the power to make its own rules,

including rules to "limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions." Clearly, that's a paragraph and a jurisdiction of the tribunal—the power to make those rules—that's a sibling to the most expeditious method of disposing with application.

Would you advocate the deletion of that rule-making power from the act, the power to create rules to "limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions"?

Ms. Colquhoun: I agree it makes one uneasy, wondering why they felt it would be necessary to include that in the legislation. A sitting member of a tribunal or a panel always has the right to tell a party that they've heard sufficient submissions—

Mr. Kormos: To speed it up. I've been told that by numerous judges.

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Ms. Colquhoun: But it is a concern why they felt it was necessary to include that in the legislation. Then, as you say, it rolls into the whole concern about the emphasis on dealing with matters in an expeditious way. It's certainly something that we've seen happening in other tribunals, for instance, the Social Benefits Tribunal, where they schedule hearings for a certain period of time. The tribunal member will tell you that you've only got 12 more minutes. If you need another hour, you need another hour. The focus on dealing with matters quickly rather than thoroughly and fairly is of concern.

Mr. Kormos: The issue of fees: I agree with your proposition, and I think many people do, even though some have dismissed those concerns as being unwarranted, because surely the government doesn't mean filing costs; they only mean costs of preparing photocopies. I think that's a bunch of presumptuous hokey. But what about costs? It seems to me that when you have a direct-access model, you've got to have costs, as compared to the commission-driven model, where the commission performs what has been described as triage.

Ms. Colquhoun: I don't think you have to have costs. The Ontario Rental Housing Tribunal generally doesn't order costs. It's a direct-access model, where a tenant or a landlord can bring an application if they feel that they have grounds to do that.

Mr. Kormos: Fair enough. But in a human rights case, you can have a relatively short one afternoon of hearings, but you could have cases like the autism case—the autistic children case, where the commission has done a brilliant job—which is lengthy, with days and days and days of hearings and volumes and volumes. I'm concerned about a respondent, for instance, against whom a baseless claim is made, but not baseless enough to be dismissed as frivolous and vexatious. This is what I'm saying: How do you create fairness, then, for the respondent who is unjustly—or inaccurately or improperly; I shouldn't say "unjustly"—accused of discrimination, who expends thousands of dollars, just as the com-

plainant can expend thousands or tens or hundreds of thousands of dollars? How do you protect the parties in direct access, which is more akin to the private civil litigation process?

Ms. Colquhoun: Your suggestion that that doesn't happen now is because the commission has vetted the complaint?

Mr. Kormos: It also assumes responsibility for costs, because it's the one that prosecutes. I understand the position of the direct-access people, and maybe it's my background in the type of law that I'm familiar with, but I see the role of the commission as similar to the role of the crown attorney. I agree with the proposition that people don't feel involved in the decision-making, but then again, victims of crime don't feel involved in the decision-making either, because the crown attorney makes decisions in the public interest, not in the victims' interests.

Ms. Colquhoun: But accused people don't get costs if they're acquitted.

Mr. Kormos: I'm talking about the role of the commission vis-à-vis the crown attorney. But in civil litigation, the successful party can make a claim for costs, and there's a rationale for that, isn't there?

Ms. Colquhoun: Yes, there is, but if there is any provision for costs to be awarded, we would suggest that it be used rarely and only in the most egregious situations, where there's some sense that a matter was brought unnecessarily.

The Chair: Thank you very much. The government side?

Mr. Zimmer: Thank you very much for your submission. I've read it over carefully. Please do thank the other clinics whose submissions you've filed on their behalf.

I want to say that I'm pleased to see that you see the merit in the direct-access model, and you've elaborated your reasons quite cogently, especially the paragraph where you've got some thoughts expressed under what it means for claimants to control their own claim. We heard about that issue yesterday in Ottawa. I think that this business of direct access and complainants having control over their own claims, when coupled with the amendment that the Attorney General is committed to, to ensure that each claimant has proper legal representation, is going to go a long way to speed up the claims and to give claimants a real sense that they've got, if you will, ownership and control over their claim.

On a separate note, I've made detailed notes of the particular needs and concerns that you've expressed of the people in the northwest and what it means for them not to have the office here, how that plays out in terms of their claims and how direct access will do a lot to improve the system in that regard.

Thank you very much for your submission and the written materials you've provided.

The Chair: Mrs. Elliott.

Mrs. Elliott: Ms. Colquhoun, you indicated at the beginning of your presentation that you support Bill 107

because it does allow direct access to a tribunal for a hearing for the first time. But as you know, the tribunal doesn't guarantee a hearing. It can dismiss a hearing. The tribunal can set up its own rules for determining how it wants to proceed with a case, including the expeditious process that you've indicated concern about, and I certainly share that concern.

I would like to comment on one aspect of your presentation that I found to be the most significant, and that is the fact that when the Attorney General announced this system, the new direct-access system, he indicated that the third pillar would be the legal resource support centre and that it would guarantee legal representation for all people who need it. He's only now going through consultations to determine how that should be determined? It's absolutely astonishing to me how he could proceed with introducing the legislation without really knowing at that time how he was going to deliver. So I think when people express skepticism about how this system is going to work, those concerns are well founded because, for the life of me, I don't know how it's going to happen. For all of the people who have presented to us with those concerns, in my view, those concerns are legitimate.

I thank you for your presentation. I think we have a lot of concerns that need to be addressed here, but thank you.

Ms. Colquhoun: The devil is in the details often, and certainly very much so in this case. On a broad scope, we support the changes that are being proposed, but if the details aren't there, if there isn't the legal support for people to be able to bring their complaints with assistance, then it will be all for naught.

Mrs. Elliott: I agree. Thank you.

The Chair: Thank you very much. Mr. Kormos?

Mr. Kormos: Chair, I have a motion that I wish to make at this point. I know Mr. Zimmer is interested.

I move that the standing committee on justice policy invites former OHRC Commissioner Keith Norton, current Commissioner Barbara Hall—

Interjection: Sir, could you slow down, please.

Mr. Kormos: My apologies.

Now that Mr. Zimmer is back, I move that the standing committee on justice policy invites former OHRC commissioner Keith Norton, current Commissioner Barbara Hall, and commission managers and staff to attend before the committee during its consideration of Bill 107, and that they be allowed adequate time for their submissions and responses to questions.

The Chair: Any debate?

Mr. Berardinetti: If I may ask a couple of questions, Mr. Kormos, when you say "managers and staff," do you expect a lot of them to show up? I'm not sure who is going to show up. When the subcommittee sits down and puts together a list of deputants for presentations for Toronto, how much time should we give them, I'm wondering.

Mr. Kormos: The motion clearly says "be allowed adequate time for their submissions and responses to questions."

Mr. Berardinetti: What do you think would be adequate time, in your view, just your opinion?

Mr. Kormos: I guess that remains to be seen: how many of them there are; how many commissioners attend of the two who are requested; whether or not there are any amendments to the motion, adding to the motion, requesting attendance of yet further people. It's a matter of good faith. Look, if I want to filibuster the bill, I'll do it so effectively during clause-by-clause that you'll be an old man before this thing passes, okay?

Mr. Berardinetti: I already feel like an old man.

Mr. Kormos: Let's just get realistic here and be practical and act in good faith, like we've been so far, and agree that if the motion passes, it will then be up to the subcommittee to structure this in good faith with a reasonable amount of time for these people to make their submissions and answer questions.

Mr. Berardinetti: As long as my colleagues know, and it's clear to all of us, that the subcommittee will decide and work out time periods for these people to appear. That's all. I wanted to be clear on it. I support the motion. I'm not saying I don't support it.

Mr. Kormos: Why are you so suspicious, Mr. Berardinetti?

Mr. Berardinetti: I'm not suspicious. I just want to be clear so that when we sit down to go through this, I just want to make sure—I don't know which staff are going to show up. I want to hear as well from Mr. Norton and Ms. Hall, but I don't know who the other staff people will be, that's all.

Mr. Kormos: We need representative staff. We need somebody here from management, somebody here from the hands-on, active staff, in my view, to comment on Bill 107, and to comment on 107 in the context of what this committee has heard. Let's not be silly. We're not going to have every single staff person. They don't want to come here. They've got better things to do. They're too damn busy because they're understaffed and under-resourced. You know that.

Mr. Berardinetti: Of course, I know that. I just want to know, when we sit down to our subcommittee, who is going to be coming out to speak on behalf of the staff people. That's all. I just wanted some clarification. We can do it later in Toronto. I support the motion; I just wanted clarification.

Mr. Kormos: God bless you.

Mr. Berardinetti: And God bless you too.

Mr. Kormos: I appreciate the support for this modest proposal.

Mr. Berardinetti: I just wanted some clarification, that's all.

The Chair: Any other debate?

Mr. Zimmer: I'm going to propose an amendment and I'll tell you what's behind my amendment. It's just an editorial thing, really. I would amend your motion and move that the Chair of the standing committee on justice policy invite the chair and any former chairs of the Human Rights Commission to attend—and so on. Just let it go and give them adequate time to do their work. My

experience has been that chairs will show up with their staff sitting beside them, much the way they do at the other standing committees. So we'll just invite the chair and any former chair.

Mr. Kormos: I need your direction, Chair. Can I accept that, as the mover of the main motion?

The Chair: Yes.

Mr. Kormos: I accept that. I don't want to deny anybody an entourage. Lord knows, Mr. Zimmer has one here. Certainly chairs of the commission should be entitled to them.

Mr. Zimmer: Have you got the motion now? It would be—

Mr. Kormos: The motion, in my view, having accepted that amendment: I move that the standing committee on justice policy invites former chairs/commissioners of the OHRC and current Commissioner Barbara Hall and commission managers and staff to attend before the committee during its consideration of Bill 107, and that they be allowed adequate time for their submissions and responses to questions.

Mr. Berardinetti: That's fine.

Mr. Zimmer: Yes.

The Chair: Agreed? That's carried.

Mr. Kormos: Let's have a recorded vote on this, Chair.

The Chair: My apologies.

Mr. Kormos: Never apologize, never explain, but still let's have a recorded vote.

The Chair: Mr. Kormos wants a recorded vote. We're going to vote on the motion, as amended.

Ayes

Balkissoon, Berardinetti, Elliott, Kormos, Van Bommel, Zimmer.

The Chair: That's carried.

This committee is adjourned for lunch. For the committee and staff, lunch is being served upstairs in boardroom 2.

The committee recessed from 1232 to 1346.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 710

The Chair: Good afternoon. We're resuming our committee meeting looking at Bill 107, An Act to amend the Human Rights Code.

The first presenters this afternoon are the Ontario Public Service Employees Union, Local 710, Thunder Bay, and Ms. Brenda Clapp, who is the president.

Ms. Brenda Clapp: Good afternoon. First of all, before I do my presentation this afternoon, I just want it known that when I've gone to somebody who has authority to make a difference, I've always tried not only to bring the problem to them but to try to find a solution so that I can offer some positiveness on how to find some resolution and resolve.

With that in mind, I'd like to start by saying hello and good afternoon to all of you. I'm glad to be here today and to have been given this opportunity to voice concerns surrounding the McGuinty government's Bill 107 and changes to the Ontario Human Rights Code.

Before proceeding further, I would like to take this time to introduce myself and share some of my history with you. I am Brenda Clapp, and I have been employed with the Ministry of the Attorney General. I have spent the past 27 years working in the offices of the Superior Court of Justice. Throughout this 27 years, I have been a proud and active unionist with the Ontario Public Service Employees Union. Currently, I hold an elected position on my local's executive as president of Local 710. I say with confidence and conviction that the Ontario Public Service Employees Union has worked intensely to ensure that the Human Rights Code is upheld and preserved in numerous ways, such as within our union, within our collective agreements and within our province.

OPSEU leads in many areas of equality such as the Provincial Women's Committee, Live and Let Live Fund, Provincial Human Rights Committee, Youth Committee, Rainbow Alliance, Aboriginal Circle, and Workers of Colour Caucus, to name just a few.

The Ontario Human Rights Commission is second to none and is recognized and revered as a safeguard for those who require its services. The Ontario Human Rights Commission does not discriminate who you are, what you are and especially not where you are in Ontario when you are seeking representation. All peoples are given quality treatment in our communities across this province.

We identify that the current Ontario Human Rights Code needs change. These changes can be achieved and must support strengthening what we already have. Ontario's human rights enforcement system is very backlogged, seriously underfunded and far too slow. These issues need to be remedied and necessary amendments to the Ontario Human Rights Code need to be implemented.

I will begin by addressing some issues of concern and conclude my presentation by offering improvements.

My concerns are as follows:

Bill 107 eliminates a victim's right to have a public investigation of their human rights complaint by a Human Rights Commission. Discrimination is eminent when a victim's right to have a Human Rights Commission prosecute their case is stripped. Victims will have to become their own investigators and prosecutors, or else they'll have to find someone to do it.

Bill 107 does not ensure that every human rights complainant will have free publicly funded legal advice and representation, as this government has previously committed to, and it does not necessitate that legal services be provided by bona fide lawyers.

Bill 107 lets the tribunal charge user fees. The tribunal could order human rights complainants to recompense their opponents' legal costs at tribunal hearings if they lose. Currently, the tribunal can order the commission,

not the complainant, to pay the costs of the party accused of discriminating. The bill will give rise to discrimination victims afraid of bringing their case forward.

Bill 107 allows the tribunal to make up rules and strip the right to be represented by a lawyer at any hearing, to call any relevant evidence, to be cross-examined and to cross-examine opposing witnesses.

Bill 107 noticeably reduces the right to appeal from the tribunal to court under the judicial review system. At this time, anyone losing at the tribunal has a great and broad right to appeal to the court. Bill 107 only lets the loser go to court if the tribunal's decision is demonstratively unreasonable. This is a very tough and hard test.

Bill 107 unjustly forces thousands of discrimination cases now in the human rights system to start over again in the new system and without the Human Rights Commission's help. Ontarians have duly trusted that they could use this current system.

Some of the improvements that I would like to suggest are as follows:

- Allow all complainants the choice of taking their case directly to the Human Rights Tribunal or opting for the Human Rights Commission to investigate their case and to prosecute if the evidence warrants it;

- Guarantee all complainants the dignity of a publicly funded lawyer at all tribunal proceedings;

- Continue current practice by allowing the tribunal authority to order the commission, not the complainant, to pay the legal costs of the party accused of discriminating and totally eliminate all of the user fees;

- Ensure all hearings are conducted fairly; for example, stop the tribunal, the judge, from being the investigator; and

- Let complainants retain their right to appeal to a court if they lose at the tribunal. Ensure that cases now in the human rights system are completed under the code and needn't start all over again under Bill 107.

In conclusion, I personally thank each and every one of you for being here today, for giving of your time and making an endeavour to strengthen the Ontario Human Rights Code. Your voices are strong. They are heard by many. You have the ability to empower those in government to make all necessary changes to the existing Human Rights Code. We must move forward together, unified, to ensure that our families and all Ontarians have fair and equal treatment under Bill 107.

The Chair: There's just a little over seven minutes for each side. We'll begin with the government side.

Mr. Berardinetti: I think we should at least take this opportunity to thank Sister Brenda Clapp for attending today and for your presentation. We will take your points into consideration when we go through this bill clause by clause in the near future.

The Chair: Mrs. Elliott.

Mrs. Elliott: I don't have any questions, but I also would like to thank you for your thoughtful and very sensible recommendations, which we will certainly look at in the course of deliberations. I think your final point

that we must all work together to make the human rights system better for everyone in Ontario is really important, so I thank you very much for that.

The Chair: Mr. Kormos.

Mr. Kormos: How much time do I have? The balance of her 30-minute slot?

The Chair: Yes.

Mr. Kormos: Sister Clapp, thank you very much. You're the one who took time out of your day to come here—we're paid to be here—and I appreciate that. I'm grateful for the comments of Mr. Berardinetti, but I'm woeful that the phrase "take into consideration" is the lowest level. You've got "take into consideration," which is sort of, "Yes, thank you very much for the submission." "We will strongly and thoroughly consider" is one stage up, and, "You've made a significant impact on our deliberations" is one higher. I'm going to work on them, because I think there's stuff here to work with.

Of course, the AODA is a strong proponent of the two-path system, if I can call it that, the dual-path system, and you have endorsed that today as well—direct access to the tribunal, option A; the alternative option is to use the commission as it exists now—and I am increasingly impressed with that. However, I'm concerned. I spoke with some of the Liberal members. My discussions with them have caused me to feel greater concern about this option, particularly because it has the potential to create a two-tiered system. In other words, if you've got cash, you've got the big, big wad, the pile of 50s, 100s that you pull out of your pocket and you put them on the lawyer's desk, the \$600-, \$700-an-hour lawyer, you can then fast-track, right?

1400

What happens, then, to the cases that are being processed by the commission? Do they get put at the end of the line of the tribunal, such that poor folk—there are still a whole lot of poor folk in this province. We've heard a lot from the community of persons with disabilities. One of the things that impresses me—and this is not to say that all persons with disabilities are poor, but if you've got a serious disability or even a not-so-serious one, you stand a higher chance of being poor than other folks do. That's one of this province's shortcomings.

So what about the dual-path model? If the government adopted it and if I became persuaded of it, what would convince me that we wouldn't have—how would we make sure the commission-processed complaints don't get put to the end of the line?

Ms. Clapp: Number one, to ensure the commission's complaints that have been processed don't get put to the end of the line, eliminate the user fees altogether. I think that's really what we have to move forward and look to.

There are a lot of people, as you have quoted, from the disabilities—they, in a lot of cases, have a lot of other issues they deal with throughout their lives. One of them certainly can be financially, depending on the disability, of course. Even for normal people who have jobs and want to utilize the commission, it's unfair to have user fees attached to this. There are a lot of young people out

there, middle-aged and older people who would use the commission, and to have fees for services and take the chance also that if you happen to lose you may have to pay your opponent's legal costs as well, that's going to deter an awful lot of people from feeling confident and feeling that the commission is there on their behalf.

Mr. Kormos: I don't know if you had a chance to read the Thunder Bay paper this morning.

Ms. Clapp: No.

Mr. Kormos: I read it and it curled my hair when I read page 3 of the Thunder Bay Chronicle-Journal. I have the data from the Ontario Human Rights Commission that say that last year, for instance, they received some 2,395 complaints, give or take, and that 57.1% of those complaints were resolved at the commission level—settlement before mediation, mediated settlement etc. Imagine my shock and surprise this very morning—I darn near fell over; I almost spilled my Sanka—when I'm reading the paper and a prominent government spokesman—I'm giving too much away; spokesperson—a prominent government spokesperson said that of the 2,400 complaints—did you read this, Mrs. Elliott?—the commission received last year, only 100 had been settled. Now what in Lord's name was that government spokesman smoking when he said that, when we know that 57% were resolved without even going to the tribunal? Can you understand why somebody would make that sort of comment?

Ms. Clapp: I don't know why they made the comment, and comments like that shouldn't be made without being backed up with facts, that's for sure. I don't know why somebody would make that type of comment.

Mr. Kormos: I figured it was, well, something he was smoking, but far be it from me to suggest what causes people to say things like that.

What has OPSEU had to say about staffing levels in the Ontario Human Rights Commission? Do you know?

Ms. Clapp: Staffing levels are very, very low, and this is what is creating some of the horrendous backlog.

Mr. Kormos: Do you deal professionally within the union with your colleagues in working in the Human Rights Commission?

Ms. Clapp: Absolutely.

Mr. Kormos: What can you tell us about what they've got to say? Hopefully we'll hear from them when we're back in Toronto. What sort of reports do you get?

Ms. Clapp: The material I've read that has been provided to me by our union—basically what we would like to see is this entire Bill 107 put on the table to rest in its entirety. Barring that from happening, because a lot of times, once a bill has been introduced and things are rolling, it's hard to turn back the pages of time, what we would like to see is that these submissions that are made to the commission with regard to the problems and the flaws be seriously looked at and a lot of great input from various areas implemented before the final decisions are made on behalf of all the people in Ontario.

Mr. Kormos: By the way, the level of staffing, as I know it, in our various court offices ain't exactly up to par either, is it?

Ms. Clapp: No comment.

Mr. Kormos: What does that do for staff morale when you've got understaffing, when you've got case-loads that are far beyond what staff can reasonably be expected to cope with?

Ms. Clapp: First of all, you hope that you're dealing with staff who all have a great sense of humour. Barring that from happening, when you're working under a lot of pressure and you're taking other people's jobs, chunking them up, and they're being put on your desk so you're carrying more of a load, before you know it time rolls by and you're burnt out and then it's not a great public service anymore. You're burnt out, you're not providing what you should be providing to the public or to anyone else, and the process seems to fall behind.

Mr. Kormos: And from time to time mistakes get made because of that which wouldn't otherwise be made?

Ms. Clapp: That's definitely a possibility.

Mr. Kormos: Staff, when they get burnt out, get sick, take sick leave, take stress leaves?

Ms. Clapp: All of those things happen, and accidents can happen. That's par for the course.

Mr. Kormos: Ms. Clapp, I don't think there's anything else that I can ask you that's going to add to what was, like so many others, a substantial submission. Thank you very much, Sister Clapp.

Ms. Clapp: Thank you very much, and I'd like to thank everyone here. It's been a terrific opportunity to be given this chance to come here and speak with all of you today.

The Chair: Thank you for your presentation.

ROBINSON SUPERIOR TREATY WOMEN'S COUNCIL

The Chair: Next is the Robinson Superior Treaty Women's Council, Marlene Pierre. Just for your information, this is a group that arrived and is being accommodated for 2:10.

Mr. Berardinetti: Could you say the name again?

The Chair: Robinson Superior Treaty Women's Council, and its Ms. Marlene Pierre.

Good afternoon. Welcome to the committee. You may begin.

Ms. Marlene Pierre: Thank you for allowing me to participate in these proceedings. It appears that everyone seems to be all so nice to each other around this table and you have asked some interesting questions. However, I just think somehow we're missing the point with respect to the aboriginal community in Ontario.

I want to let you know a little bit about myself. I come from a family of eight. We lived off reserve, which had a lot of legal impact as to how we were treated by the government. We had a movement afoot. I became involved as an activist and as a community developer. Part of that work was assisting in the implementation of the Human Rights Code back in the 1970s and 1980s. I had the pleasure of working with Bob McPhee, who was the

chair of the commission at that time. His main concern, especially for the northern communities, was how we were to get our people accessing and using the code. So we went about trying to help him do that job as effectively as we could.

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Much to my and others' disappointment, the Human Rights Commission's work may have been valid in southern Ontario, but certainly not in northwestern Ontario. I can bet that none of you has been in any of those communities that surround Thunder Bay, maybe with the exception of a few, so you have no idea of the expansiveness of the land and the socio-economic conditions of our people, who have to live in those isolated, semi-isolated and rural communities, and who quite often go unprotected, not only in the aspects of human rights and what our human rights are, but in every other aspect: housing, employment, justice delivery.

We heard from Kinna-aweya Legal Clinic. Myself and a few others were responsible for getting that legal clinic established here to serve the needs that they do serve with respect to the clinic's work in and around the community, and we set up a delivery model for that to happen. Despite that, because it was set up to serve native and non-native people, we complained after about 10 years of the clinic's work that there were very few people accessing that service as well.

The Human Rights Commission's work has been practically non-existent with respect to the aboriginal people in our territory. That's a shame, and you have the responsibility in this new exercise to ensure that that happens. How? We heard a lot of eloquence and a lot of strong recommendations, and we've heard from people who have studied this Bill 107. Personally, I haven't had a chance to even look at it, because we only found out yesterday that this was happening. Our headwoman, Norma Fawcett, said, "Get there, tell them the story about our people in the north, and have our input into this bill so that some remedies can be made for our women and their families." That's the reason I'm here. There has been, as I said, a lot of eloquent written material. I would hope that what I am saying to you will be listened to and somehow incorporated into your next exercise of getting this bill through.

The Robinson Superior Treaty Women's Council is a political women's group just newly emerged. It covers the territory from Wawa to 60 miles outside of Thunder Bay. We represent 14 First Nation communities. We represent off-reserve First Nation women as well. I would say that there are close to 10,000 First Nation families directly connected to the Robinson Superior Treaty living here in our territory, plus a lot of other NAN people, treaty people from other areas of Canada who come here to live and to try to make a better life.

Unfortunately, that is not happening. Over 50% of our families are single-parent-led, female. They earn an average, in today's money, of about \$12,000 a year. They have an average family size of five. I can go on and quote you all day about the statistics that directly affect our

families, and it is not a lie or an exaggeration to say that our families are living in Third and Fourth World conditions. If any of you have ever been to some of our communities—and I don't like to be patronized when I say these things, because you haven't lived there. The guy earlier today said three dollars for a loaf of bread. Yes, that's true, and there are a lot of other costs and expenses associated with not just money but our lives, our children's lives.

I spoke to a friend the other day who could not rely on the government of Ontario to help him in his job. He's gone to the World Bank; he's gone to Save the Children Canada to bring food into our homes. Now, why do we have to do that? We are the most impoverished of the Canadian aboriginal families anywhere and it's us women who are carrying that load. We need help. How can this help us? It can help us a lot.

I came here—one more thought I had. I was called to sit on the Canadian Human Rights Commission in the 1980s. I never was called once to adjudicate in any way or have a discussion with any of the people who were up there about the Indian condition. How would people who do not have any connection to our way of life have any idea how to deal with the issues that come before them, whether it's employment-related, justice-related or any other kind of discrimination? How can you people who are going to be sitting on the tribunal have any empathy or understanding? I believe you have to have people of our ancestry on the tribunal properly represented and being able to sensitize other commission members when they're talking about community issues. I think you have to do that. You would be thoroughly missing an important part of the people's lives you have to adjudicate over in Ontario, especially northwestern Ontario.

Deeply disappointed when the Ontario Human Rights Commission closed their office—you want to talk about access? We have no access. So you have to bring those services to at least Thunder Bay. You have to have a model that reaches out into Sioux Lookout, Fort Frances, Geraldton, Longlac so that our people can start using your services, or else it's going to be a dismal failure as such that happened with the Ontario Human Rights Commission. You don't want that to happen with this new bill and its implementation—totally meaningless to us if you don't include us in the process and make sure that we have access to this.

But my real point, and the message from our head woman Norma Fawcett today, is, "Marlene, tell them about the matrimonial property law, or the lack of one." The women who are sitting around this table and the women who are in this room listening, how would it be for you and your children if you did not have the Family Law Reform Act to protect you, to ensure that when there's a marital breakup, you get your fair share, that your children get their fair share, that all of those assets or whatever assets you have are evenly dispensed? That does not exist in First Nations communities. I would hate to see the province of Ontario hang its hat on some kind of hook that says, "Oh, well, that's a federal respon-

sibility." Well, no, it's not a federal responsibility; it is also a co-responsibility of the province of Ontario to ensure that its residents have the privilege and protection of law. For us it would be a privilege, because we don't have it. There are no laws under the Indian Act that protect women and their children during a marital breakup. Now, what does that say? Is that discrimination? Is that the government not having any—how do you call it?—feeling or any kind of answer or anything for aboriginal women in our territory? No, that is unacceptable.

The province of Ontario has to play a role in protecting all of its citizens, including us, because quite often when you have a gun—I tell you, I do support Debbie Ball, the lady from the transition home, the Faye Peterson Transition House. She hit the nail on the head with every issue we have ever discussed around family violence, separation etc., etc. I unequivocally support what she has said and, quite honestly, you people are here to listen to us, to what we have to say. I'm saying that all of those things that she alluded to in our First Nations community exist, 99.9%. We did a survey in 1990 where eight out of 10 aboriginal women were either incestually, sexually, physically, or emotionally abused, etc. When you have a gun at your head, which is often the way it happens, you just leave; you leave as safely as you can with your family; you go hide out. You've got to do what you've got to do. And when you leave, where do you come? You come to Thunder Bay. Right off the hop, we're involved with the provincial government. You have a responsibility to help us put together a process to help us—the groups like the Robinson Superior Treaty Women's Council—put together laws or bylaws for implementation that protects our rights.

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We do not have any rights on the reserve other than to live. That's about it. If you're not friendly with the powers that be in the community, you don't get anything. You don't get that next house that comes up, and you're still living in substandard housing as it is. You're not drinking good water; your children aren't eating good food. Open up your eyes, Ontario, and see how our people actually live.

I'm asking, on behalf of the women in our territory—you must help us. If this is one of the small ways, through this process of putting together this bill, then help us. Make sure that even if you can't do anything—I shouldn't say that because I think there's enough anger out in our communities, i.e. Caledonia. We're just tired of waiting for the federal government to make some decisions, to take a process and establish—make it right for all of us, not just the Indians or not just the white people but everybody so that we're all satisfied. But that's not happening, and people do not understand the strength of our treaties. We do have treaties, even though we don't use them enough to prove our point as a separate people and a governing people. This bill, I hope, whether it comes out—is it still a flawed document? Hey, it's better than what we have.

One other big message I want to bring is that you've got to make—you know, the Ontario Human Rights Commission has had, I'm sorry to say, a very poor image in terms of actually getting the job done in the past. You don't want that to happen again. So I would suggest that the accessibility issue be thoroughly examined from our point of view and that you put out a campaign image, improvement plan or something, because you guys are spending millions of our dollars trying to implement this. How much of that is going to come to northwestern Ontario? How much is actually going to benefit our people? Maybe after 35 years of being involved, I'm a little skeptical. But I do still have faith and hope that someday, somewhere, somebody is going to do the right thing for our people.

Those are some of the messages that have to be given to you. We have so many issues: We have seniors' vulnerability, we have employment-related issues—and not just against non-native employers but our own people. Lateral discrimination, lateral racism? Yes, it exists, and more than we want to publicly admit, but today I am. I'm saying that we even discriminate amongst each other as aboriginal people, either tribally, genderly, by age, whatever. I'm 62 years old. There are a lot of women like me with a wealth of experience, but I won't be able to ever get a job with the chiefs because they're scared of me. They don't want me in their quarters where I can tell the truth.

There's a lot of that kind of thing that exists in our own communities, so we have to contend with that. One of the big things I always dealt with is, when our people get fired or released because, you know, you said the wrong thing that day to the boss, you don't have a means to fight it because you don't have the money, you don't have the connections, you don't know where to go, and yet you know you've been wrongfully treated for whatever reason.

I think you have to do a very progressive and aggressive campaign to involve our people in this process, because I do see it as an answer to some of the dilemmas we face that prevent us from feeding our families. When they fire you and all of a sudden you don't have a job, your children don't eat. You've got five kids, and that's not unusual. We have big families.

With respect to the matrimonial property law, there's been a lot of pressure across the country, and as well from the United Nations, that Canada has to do something about matrimonial law and family violence with respect to aboriginal women and their families. This is our time, in our little, narrow mandate here, to respond effectively, to give leadership in Ontario on how to resolve some of our family life issues. We want healthy families. We want our children educated. We want to be able to feed them the proper foods just like you do. When there's a family breakup, we want our share too. But right now that doesn't exist. I don't think the non-native women in this country would stand for something like that, and they didn't and they got what they wanted. But we need the help too, because we don't have resources.

We're a volunteer group. We just started, and we're already making presentations to the standing committee on Indian affairs and the status of women, because nobody is listening to us because we're not part of the mainstream women's movement in Canada. We're a grassroots—I don't like that word. Our women come straight from their kitchens to our meeting rooms. So we represent the voices of, I would say, 5,000 women just in our little, small area of the Robinson Superior Treaty area.

We seek the good thoughts, the good work and the good support that this standing committee has been charged to create for us, for aboriginal women, and for all Ontarians. I would like to thank each and every one of you, even though I do not have a written submission, that you have listened to what I have said. I would welcome any kind of question at this point.

The Chair: Thank you very much. We'll begin with Mrs. Elliott.

Mrs. Elliott: Thank you very much, Ms. Pierre. I don't think you needed a written presentation. Your verbal presentation was very powerful, and it's almost hard for me to know what to say other than to say to you that I think you have brought a unique perspective to us and one that is really important for us to hear, because I think it's generally true to say that we tend to have more of a southern bias when we look at these things and think that it would apply across the board to all parts of Ontario, when of course it doesn't. It's really been helpful for me certainly to hear the difference that an enhanced code could make in the lives of aboriginal women and children and how from individual cases to systemic cases in the sense of things like the matrimonial property inequity. I don't know exactly how that could be resolved, but it certainly seems to me that that would be a matter that should be the subject of a discrimination complaint.

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I also very much appreciate your suggestions about how we can work specifically with your group to make it meaningful in the sense of having representation on the tribunal to let people know how things are and how to understand things better and to also have more direct access, whether that's reopening district offices or having more direct lines of communication, whatever form that might take. They're all really practical suggestions and certainly I think all of us take them very seriously.

I do thank you for being here today. Even without a written presentation, I'm making lots of notes and I certainly will think about them as we continue our discussions. So thank you.

Ms. Pierre: I thank you as well. I did bring a copy of our report. I will leave it with the clerk. There are a number of recommendations that can be extracted on a number of topics, including family violence, child poverty and Bill C-31, which is another discriminatory act where the federal government is trying to phase out Indians in Canada. So we've got some very serious and hard work to do.

If any of you are sitting on any other committees that affect aboriginal women and the resources—especially

the lack of resources—that we have, we need to have somebody helping us on a full-time basis. Right now, we're just doing it on a volunteer basis. I would like to solicit any assistance that any of you might be able to give us with respect to spreading the word about community initiatives like ours, our movement. This movement is also happening in the Treaty 9 area. It's also beginning in the Treaty 3 area, where First Nations women are starting to organize. We're going to be coming and knocking on the doors of Mr. Bryant's office, but in another department, to help aboriginal women in Ontario.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, ma'am. I very much appreciate your coming here today and saying what you have. I think you create some opportunities for us. Yesterday we were in Ottawa and we heard from the Native Women's Association of Canada. Later this afternoon we're going to be hearing from a spokesperson for the Ontario Native Women's Association—

Ms. Pierre: I'm very familiar with both, having been president of both of them at one time.

Mr. Kormos: Okay. I'm sure you would be—and later, Nishnawbe-Aski Legal Services.

I'm from southern Ontario. Some of us have had the opportunity to go—I know Mr. Zimmer has been there as well—along the Timmins-James Bay coast to Peawanuck, Kashechewan and communities like that.

Ms. Pierre: Kashechewan is a good one to go to.

Mr. Kormos: "Good" is a relative term.

Some members are very newly elected and other members, when they get the opportunity—I suspect Mr. Mauro has been far more extensively in the northwest—obviously, when any of us gets the opportunity, I think it's incredibly important to visit those remote, isolated, incredibly poor, marginalized communities. But, as I say, you create an opportunity.

The clerk followed the committee's instructions in terms of advertising these committee hearings. With some relatively short notice to the clerk, we gave instructions for the committee to be advertised in as many publications and newspapers as possible and in as many languages, including aboriginal language papers. I say to my committee colleagues, here you are today, and I say, you create an opportunity. The parliamentary assistant has staff at the back, his entourage. They're not as well paid as they should be but they're here nonetheless. What I'm suggesting is that if there is an interest in some of these communities for this committee to travel to those communities, then this committee should make best efforts, in the early fall of this year, to travel to some of those communities. I don't know whether it can be done. We've got to live with the timetable that's imposed upon the committee with the agenda that the committee is dealing with, but I think it would serve the committee well, if there's an interest in people in any of those communities to speak with this committee, to address this committee, and an interest in the committee to be there instead of those people travelling to wherever it is, because of course the committee has agreed that we'll

subsidize the travel costs of people travelling to whatever city.

But again, I'd encourage you to talk to Mr. Zimmer and his staff at the back. They're the better-dressed people in the room—seriously. You'll get some contact information. I can't speak for the other members yet—it's something we've got to discuss—but I'd be more than pleased to propose that we do some of that travelling.

The Chair: Thank you, Mr. Kormos. The government side. Mrs. Van Bommel.

Mrs. Van Bommel: I want to say thank you very much for your very passionate presentation, especially on such short notice. I hope that, not only in leaving your document with us, but if you have any further thoughts as things come by, you will make further submissions to us, because I think as we go into clause-by-clause we certainly want to take those into consideration as well.

I heard the comment about expertise being necessary on the tribunal and the commission. We've heard that before from other groups, and in terms of aboriginal expertise I think it certainly is important to have it there.

In terms of the matrimonial property law, I don't quite know how to put my thoughts into words on this one because, as a farm woman, I know, and having been a founder of the farm women's movement in Ontario and in Canada, that was exactly why. I understand your outrage. As farm women, we work very hard, and at the dissolution of a marriage we had no property rights. That has changed through the courts and through the laws and legislation. I'd just like to say I understand your outrage at the fact that this still hasn't happened for you, and it should. So I encourage you to continue to fight for that.

We as farm women now have rights to the property that we work for—women like Irene Murdoch, who died a poor woman in spite of the fact that she spent her life working on the farm. When her husband decided he didn't want her anymore—she had worked on that farm and built that farm—with the divorce action, she lost everything and died a poor woman. I certainly share your outrage at that. Thank you very much for your passion.

Ms. Pierre: Thank you for your empathy, then.

The Chair: Thank you very much for coming in.

PATRICIA MANAHAN

The Chair: Patricia Manahan?

Ms. Patricia Manahan: My name is Patricia Manahan and I am a woman with disabilities, a senior, and a member of the board of the DisAbled Women's Network of Ontario. I'm but one of many voters who may have to use the access to the Human Rights Code at any time.

I commend the government for wanting to fix the problems with the present human rights protection system, but have many concerns about the proposals in Bill 107, and I thank you for the opportunity to add my voice to those you have heard and will hear regarding this controversial bill.

It's unfortunate that the government did not consult with more concerned groups and individuals prior to the February announcement or between that time and the bill's introduction on April 26 in response to many requests. No bill should be introduced without proper input from the people it affects.

The Ontario Human Rights Code was enacted in 1962, and states in its preamble that the code seeks to promote "a climate of understanding and mutual respect for the dignity and worth of each person so that" everyone "feels a part of the community and able to contribute fully to the development and well-being of the community and able to contribute fully to the development"—

The Vice-Chair: Could you slow down?

Ms. Manahan: Oh, I'm sorry.

The Vice-Chair: The interpreters need to be able to keep up with you. Thank you. Go ahead.

Ms. Manahan: —"and able to contribute fully to the development and well-being of the community and the province."

1440

It makes it illegal for anyone in the public or private sector to discriminate against a person because of his or her disability, sex, religion, race, sexual orientation or certain other grounds. It bans discrimination in access to things like employment and the enjoyment of goods, services and facilities. It requires employers, stores and others offering goods, services and facilities to accommodate the needs of disadvantaged groups protected by the Human Rights Code, like persons with disabilities, up to the point of undue hardship. It requires organizations in the public and private sectors to remove existing barriers to persons with disabilities and prevent the creation of new ones.

There has to be a user-friendly way to enforce the code. Right now, a person who believes he or she has been discriminated against for any of the reasons covered under the code can make out a formal document called a "human rights complaint" with the Ontario Human Rights Commission. This document is to list all facts relevant to the complaint, and the commission is supposed to give any assistance needed to do this form. The form is then reviewed and the commission registers it and serves it on the respondent, who is supposed to respond within 21 calendar days. The commission will then work with the parties to try to settle the dispute or will open an investigation to clarify the facts and then decide if the matter needs to go to the Human Rights Tribunal.

From an OHRC news release dated May 11, 2006, in the fiscal year ending March 31, 2006, 170 cases out of the 2,260 cases resolved were referred to the tribunal, 1,291 were resolved through negotiated settlements guided by the commission, and 256 received commission decisions. There was no information on the number of complaints not dealt with.

It appears to me that the knowledge and intervention of the commission was and is essential to the resolution of a large number of human rights cases. This will change if Bill 107 is adopted and most of the com-

mission's powers and mandate are eliminated or substantially reduced. Complainants will have to do their own investigation, gather evidence, identify witnesses and hire experts. The commission will no longer be the public prosecutor at tribunal hearings. People will have to go to the tribunal without having had opportunities for early resolution, or they may have their complaint refused because of some technicality. The chances of the tribunal direct access system ending up even more backlogged than the present system are very high.

Although the Ontario Human Rights Code presently has some problems that need to be ironed out, Bill 107 as it now stands will make matters much worse and will take away many of the rights that the code gave us.

The best solution would be to start again with the input of the people who use the system to guide the amendment suggestion process right from the start. If this is not possible, Bill 107 should be revamped using the recommendations brought forward in these consultations and written submissions and active input from those who use the system.

There is no need to discuss what's wrong with the present Human Rights Code here. What is needed is to take a good look at the equally flawed fixes outlined in Bill 107 and find viable solutions. There are three main points I wish you to consider.

Amendments should ensure that any rights that the Human Rights Code now gives are not taken away. For instance, an option to take the case directly to the Human Rights Tribunal should be available as an alternative to opting for the Human Rights Commission to investigate cases and prosecute if the evidence warrants it.

Amendments should ensure that the bill does what the government says it does; for example, guarantee all human rights complainants publicly funded legal representation at all tribunal proceedings and strengthen, not weaken, the Human Rights Commission.

Amendments should ensure that the Human Rights Commission retains all current powers and duties to enforce disability rights or to create a new strong and effective independent enforcement agency to receive, investigate, mediate and prosecute disability complaints.

Please take a few minutes to think of the people, your voters, who need access to a strong Human Rights Code. In the majority of cases, the people who are violated and will be complainants are marginalized in some way. Some are members of obvious minorities; most are not high-income or highly educated in such things as human rights legislation. Many are blocked by physical or mental barriers, or by society itself. These are most frequently people who are suffering in some way from the violation and can be manipulated or overpowered by those who have violated them. The complaints registered are quite often against businesses, organizations or the government. It's like pitting a mouse against a lion.

Few discrimination victims know now or will know how to use the human rights system. Most are fearful of dealings with official agencies. They most often feel angry, confused and afraid because of the violation they

have suffered. They need very efficient assistance and support.

There is a six-month filing limitation period. It could take longer than that for a potential claimant to figure out what his or her claim should be or to access the system. Daily living must be the victim's priority, and they may be suffering emotionally and psychologically as well as financially during the period between the offence and making a claim. They certainly will be feeling totally helpless. With certain violations, the victim may be in fear for his or her safety. He or she may have suffered physical damage that needs to heal to a certain point before they can become active. Six months is a very insufficient time limit for the types of cases that can come under the Human Rights Code. Two years or more would be much more reasonable.

While we're looking at victim situations, we need to address financial barriers. As I mentioned earlier, many if not most of the people who will need access to human rights legislation are members of certain social classes. They are most often low-income and/or underemployed. Bill 107 permits a human rights complainant to be charged tribunal user fees, which may stop people who really need this legislation from filing a claim. A large percentage of human rights claims involve employment issues, and the claimant may have lost their income or job or be unable to work due to the issues being brought forward in the complaint. User fees can impose undue hardship on a claimant.

Beyond these fees, Bill 107 gives the tribunal the power to order the complainant to pay the respondent's legal costs if the respondent wins the case at the tribunal. Again, this would be imposing undue hardship on a claimant. Because the complainant will be in a position to have to largely handle his or her own case before the tribunal, the claim could be wrongfully lost due to insufficient presentation or misunderstanding of the procedures or the inability to contradict the professionals speaking for the respondents. Even the most carefully prepared case can be easily derailed by someone with more access and experience. Both of these financial impositions should be stricken from the bill.

This brings us to the matter of assistance for claimants. Under Bill 107, a claimant will have to face the person or organization that discriminated against them armed with only whatever information they could access themselves. He or she is unlikely to have the knowledge to know what evidence is needed. An individual does not have the powers required to perform a thorough investigation. He or she cannot enforce entry, inspection and examination of documents, questioning of a person or a warrant. We live in a world where we don't even have the right to access our own medical records without large financial output and satisfying certain conditions. How is the common man going to access documented proof that their rights have been violated when the very proof they need is in the hands of their opponents? How will a person on a fixed or low income be able to pay for such things as expert witnesses or documentation? Most

respondents have their own lawyers who will vigorously defend them, some from Ontario's largest law firms. If the victim does not have equal legal support, they will be at a serious disadvantage. Even with help, the prospect will be terrifying.

On top of this, section 37.1 will let the tribunal force the parties to participate in mediation. This could be frustrating and wasteful, and even harmful to a complainant. A respondent could simply use this process to drag out the case and wear down the complainant, who may already be in a fragile state. In cases that involve more personal or touchy matters, such as disability, race, religion or sex, for example, mediation could increase the injury to the victim and will certainly give the respondent more opportunity for subtle harassment or intimidation. Mediation can be constructive in many cases, but it should not be allowed to provide opportunity for further violation. It should be voluntary, with the provision that declining will be without prejudice to any rights to a hearing.

1450

The Attorney General has repeatedly made the sweeping promise that, under Bill 107, all those who bring complaints to the Human Rights Tribunal will receive publicly funded, full legal representation, regardless of income. A new human rights support centre is supposed to be established. The fact is that this centre is not established under Bill 107, though it's supposed to be covered in section 46. There's a statement in section 46.1 that the Attorney General may sign agreements to pay yet-unnamed organizations to provide legal advice or representation. This way, the Attorney General need never agree to provide any funding. He or she could refuse to renew funding even if initial funding is agreed to. Cuts to any funding could happen at any time there's a change in the government. On top of this, the type of legal support that is supposed to become available is not defined. The legal support needs to be a lawyer who is familiar with human rights legislation. Non-lawyers, such as paralegals or community legal workers, are not able to provide the level of service needed at a hotly contested hearing. Vulnerable people should not have to take it on faith that Queen's Park will protect their interests. This system and its funding must be required to be firmly clarified and approved by the Legislature.

Even if sufficient aid is made readily available to the complainants and all possible financial threats are removed, there's still no guarantee of a fair hearing. In fact, there's no guarantee of a hearing at all. In section 41, Bill 107 lets the tribunal dismiss a complaint on several grounds without holding a hearing, and section 40 gives the tribunal sweeping powers to defer a hearing.

Bill 107 requires the complainants to trust the tribunal but does not ensure that tribunal members are expert in their field. They must have enhanced expertise if the tribunal is to take on sole responsibility for the hearings, unassisted by an experienced public prosecutor like the Human Rights Commission. This is another matter that needs to be addressed whether or not Bill 107 is adopted.

Presently, tribunal members are politically appointed and these appointments really should be based on competence and expertise, with political considerations eliminated from the process as much as possible.

There's also the matter of due process, honouring certain basic inalienable rights under a statute called the Statutory Powers Procedure Act. At present, Human Rights Tribunal hearings must conform to these rules, but section 38 of Bill 107 would exempt the tribunal from this. They would be given the power to make their own rules of procedure without consulting the public or approval from the Legislature or cabinet. This positively should not be allowed. The tribunal should be accountable for all its actions.

Another cause for confusion about the tribunal is that we assume it to be the judge in human rights cases, but Bill 107 raises the possibility that it may undertake some of its own investigative functions. However, this intention has not been made clear. It's inappropriate for the tribunal to do investigations, as that would threaten the impartiality of the hearing process. This radical idea needs to be examined as a separate issue with public input.

Bill 107 eliminates the right to appeal. Section 45 states that a judicial review application is the only way to challenge an unsuccessful tribunal final decision or order. The party must be able to show that the decision or order was patently unreasonable. That is difficult to do, especially if a case was lost due to the complainant having difficulties in navigating the system. However, wealthy respondents who have lost their cases will be able to pay lawyers to craft an appeal. This causes a very unfair imbalance of rights and needs to be changed.

I'm personally a member of three groups that are often victims of human rights violations: a woman, a person with a disability and a senior. Violations against people in any of these categories are rarely just private injury on an individual but are most often systemic in nature. A Human Rights Commission investigation usually uncovers the public interest aspect of these cases now, but Bill 107 eliminates that and also limits the Human Rights Commission's power to initiate human rights complaints or to intervene in tribunal proceedings where there is a possibility of public interest aspects.

Bill 107 appears to require categorization of cases. And again, that is going to be difficult, if not impossible, for an individual to do. Bill 107 doesn't even define systemic matters. The alteration of the Human Rights Commission itself under Bill 107 has many other built-in problems as well. One of these problems is that Bill 107 threatens to significantly reduce the number and quality of public interest remedies that will result from human rights complaints. This is contrary to the resolution passed on October 29, 1998, that Dalton McGuinty promised to implement in his 2003 pledge to Ontarians with disabilities. Public interest remedies are intended to root out the causes of discrimination and to prevent repetition of past acts. The Human Rights Commission will not have the ability to conduct an investigation to

prove the need for a public interest remedy. An individual victim should not be expected to seek these. They are having enough trouble dealing with their own personal situations. There's also no provision for public enforcement of remedies. The Human Rights Commission is the most obvious body to take care of this.

In the Accessibility for Ontarians with Disabilities Act discussions in 1982 and again in 2003, there were requests by the disability community for formation of a new, independent agency to enforce the act. This was refused after the election on the grounds the Human Rights Commission complaints process would enforce our rights. The disability community applauded the new 2005 disability act. Even with the lack of a new, independent enforcement agency, we trusted in the promise that the Human Rights Commission would continue to have strong public enforcement abilities. The amendments, as they stand now, will substantially weaken the Human Rights Commission. Bill 107 will remove the complainants' rights to the commission as an investigator, guide, advocate and prosecutor. Most people with disabilities will not be able to effectively perform these duties by themselves due to barriers that exist. Proper access to publicly funded lawyers is not guaranteed under Bill 107, and should be, even if the Human Rights Commission powers are expanded rather than reduced.

The proposed secretariats are completely inadequate to provide any real support for people without their taking over all the duties the Human Rights Commission has right now. That will require much larger membership and more funding than the proposed six members each. Members need to be appointed by the same independent, merit-based selection process as for commissioners and provided with sufficient staffing and funding to fulfill their mandate. Advisory groups, which would be established under section 31.1, need to be effective bodies with membership appointed by the same process as for commissioners and not unpaid volunteers. An advisory group involved with the disability community should be made up mostly of people with disabilities—

The Chair: Thank you, Ms. Manahan. Your time has expired. Thank you very much.

THUNDER BAY AND DISTRICT LABOUR COUNCIL

The Chair: Next up is the Thunder Bay and District Labour Council. Welcome. Good afternoon. You may begin.

Ms. Judith Mongrain: Thank you. My name is Judith Mongrain and I'm first vice-president of the Thunder Bay and District Labour Council. With me is Melanie Kelso, an executive member of our council.

It was 3 o'clock yesterday afternoon when we heard that we did have time today at 3 o'clock. I thank you for allowing us to speak.

We have many concerns about this bill, and it's not a matter of saying changes should not be made, but the changes suggested by Bill 107 are not changes that will

assist Ontarians in pursuing justice. The current system does not work. That doesn't mean that it can't work; it means the government needs to fund the commission properly. Current funding is almost at the same level as that from 1995. Chronic underfunding has caused a backlog of complaints, and that won't get fixed with the changes proposed. What will get fixed is the number of complaints, as people will not be able to access or afford to complain. We need vast improvement to human rights enforcement, not a weakening of this act.

1500

Presently, the Human Rights Commission receives and decides which complaints will be referred to a hearing. There is no absolute right to a hearing. The commission investigates all complaints at no charge. The commission has the power to get warrants, compel production of documents and question relevant witnesses. All complainants are provided with a commission lawyer when their complaint is referred to the tribunal, and this service is at no cost to the complainant.

The commission can monitor the public interest or systemic aspects of all complaints when complaints are received. The commission represents the public interest in all hearings before the tribunal. The commission has the right to bring and pursue a systemic discrimination complaint at the tribunal.

There are no user fees charged to the complainant. Costs cannot be awarded against the complainant, only the commission or respondent.

The commission provides expertise to the public and uses its historic expertise, policy papers and research to form its litigation strategies.

Bill 107 weakens the commission and will have a profound negative impact on the ability of equity-seeking groups to secure the protection of their human rights, particularly when it comes to workplace complaints. Public access to and use of the human rights protection system has to be protected. Not to do so attacks the most vulnerable members of our society.

Bill 107 dismantles the commission that has historically been the foundation of a strong human rights system. It has been universal, accessible and publicly funded. What Bill 107 will do is make it an exclusive weapon of the financially powerful.

Individual Ontarians will have to file complaints directly with the tribunal and will be responsible for investigating their own cases, hiring lawyers to represent them. Currently in Thunder Bay, we're paying about \$250 an hour for a lawyer. How many people in this city or any city in this province can afford to have a law firm investigate, process and bring forward to a tribunal a case for them? It's the poor, the working class, the most vulnerable citizens who need the assistance of the commission on a no-fee basis. Otherwise, human rights injustices will be perpetuated in this province.

Bill 107 is a direct slap in the face for Ontarians with disabilities. When the 2005 disability act was introduced, there was a clamouring for an independent enforcement agency, but the government assured those concerned that

they would be protected under the human rights act, with the commission having the ability to deal with their issues. The weakening of the commission under the Bill 107 proposed changes and the creation of a powerless Disability Rights Secretariat will mean lip service only. Our disabled citizens deserve better—a whole lot better.

So how does Bill 107 get improved?

The government should start at the beginning, with proper public consultation, and build from there. But as we are already down the reading road on Bill 107, the practicality of the above suggestion seems to be moot.

Amend Bill 107 to ensure that it doesn't take away any rights that the Human Rights Code now gives.

We do not object to taking cases directly to the tribunal if they are ready to go, but the option must remain for the commission to investigate the case and prosecute same if warranted.

Any changes should not impact negatively on cases already in the system. No one in the process now should be expected to go back to the beginning and begin the gruelling process over.

The amendments must ensure that they do what the government says it intends to do: guarantee all human rights complainants the right to publicly funded legal representation at all tribunal proceedings, and strengthen, not weaken, the Human Rights Commission.

The commission must retain all current powers and duties to enforce disability rights. If a separate enforcement agency is contemplated, then that agency must have all of the powers and duties that are currently with the commission.

Thank you for your time.

The Chair: The government side. Mr. Mauro.

Mr. Bill Mauro (Thunder Bay—Atikokan): I'm not part of the standing committee that's touring the province, but I'm happy to be able to be here. I welcome the committee and all members to Thunder Bay. Thank you for ensuring that Thunder Bay is on the itinerary of all of the communities that you're visiting. Thank you, Ms. Mongrain and Ms. Kelso, for your deputation.

I only want to make one comment. The concern has been raised by the two or three speakers I've heard about whether or not people, if they go directly to the tribunal, are going to have the ability to have publicly funded representation if they're the complainant. The Attorney General has publicly committed in the House to amendments in the legislation to ensure that that will happen. So if I've got enough time, if you don't mind, I'll read you his answer that is in Hansard because you've raised the same issue again.

This is the Attorney General responding to Deb Matthews, who is a member of our party as well, who gave him the question. He said:

"I thank the member for London North Centre. I know she, and many members of this House, have taken the opportunity to meet with Ontarians about this very important bill. This is, after all, the first time in more than 40 years that this House has had an opportunity to engage in substantial changes to the Human Rights Code,

so there have been a number of questions about the bill, and so there should be. After a lengthy and productive second reading debate, the House has voted in favour, in principle, of the bill. I know that the government has consulted and will continue to consult with Ontarians. I know that MPPs in this House have consulted and will continue to consult with Ontarians on this bill. So now it goes to the standing committee on justice and social policy, where open, full public hearings will take place. Of course, at that committee we'll seek input and the committee will seek input about the bill and any potential amendments" to the bill.

"The human rights legal support centre that we are establishing is the first of its kind in the country. We have committed to providing full legal supports to all Ontarians who turn to their human rights system, at the same time as the Human Rights Commission goes forth and, on behalf of all Ontarians, addresses systemic issues, both on behalf of the commission and before the tribunal."

There's more to it, but I don't think I'll read it. I just thought it was important that I share that with you and others.

Ms. Mongrain: We had heard that. I think our biggest concern is that you may promise me a lawyer to assist me, but is that lawyer going to know human rights legislation? I know in this community we have one law firm that most of us use, as trade unionists, which is the only law firm that deals with labour issues in this community from our point of view. In this community, I cannot see us having a whole range of lawyers who have the kind of expertise needed to represent people in human rights issues. One of our biggest concerns is that all of those people who have these abilities will be dispersed since there won't be a commission. You might get a lawyer in Thunder Bay who may be really good at real estate or some other aspect of litigation, but he may not have the expertise needed.

That's one of our big concerns: It doesn't say in his statement that these are going to be people who have the expertise.

The Chair: Any other questions? Mr. Berardinetti.

Mr. Berardinetti: Thank you for your presentation. I just wanted to reiterate that we will have a chance to go through this legislation clause by clause at a later date in Toronto, and at that point we're going to bring forward something which would guarantee that or at least put it into the legislation, I would hope, so that lawyers who are in this field would be able to assist those in need of assistance. That's something that I think we want to see and probably put into the legislation.

The Chair: Mrs. Elliott.

1510

Mrs. Elliott: Thank you very much for being here today and presenting your points so clearly, especially on such short notice.

You've heard that the Attorney General—and you're well aware that he has made the statement about the legal support centre being set up and being fully funded to

provide everyone who needs it with legal representation. However, it sounded from that announcement as if the legal support centre was a clearly defined entity and that he knew exactly what he was intending to set up at the time. But you should know, and perhaps you do know, that at this time, as we speak, the Attorney General is conducting inquiries from legal aid to determine whether legal aid would be in a position to deliver this service, or perhaps they're speaking to other organizations. I don't know.

So it seems to me that this is something, since it's so fundamental to this new system, that should have been determined by now, and certainly before the announcement was made. So when you say you're a little bit skeptical about it, I would certainly agree with you.

Ms. Mongrain: I would also be quite concerned that they were looking to legal aid to assist. If you have any dealings with legal aid or members of your family or friends who've had to try and find legal aid—it is such an overburdened system itself that even to think of looking to them to do this at this point, unless you intend to more than double their funding, means nothing.

The Chair: Thank you very much for being here today.

PERSONS UNITED FOR SELF-HELP IN NORTHWESTERN ONTARIO

The Chair: Next is the Persons United for Self-Help in Northwestern Ontario.

Ms. Tracy Hurlbert: Good afternoon.

The Chair: If you could just speak a bit louder, or if we can get the mike a little closer.

Ms. Hurlbert: Good afternoon.

The Chair: That's fine.

Ms. Hurlbert: Okay.

Persons United for Self-Help in Northwestern Ontario, known as PUSH Northwest, extend our thanks to you, to the standing committee, for giving us the opportunity today—

The Chair: Can I get you to introduce yourself and to speak slowly so the sign language interpreters can do their job well? It's rather difficult when people are speaking fast.

Ms. Hurlbert: Okay. I myself am hard of hearing.

The Chair: Do you need to move that closer?

Ms. Hurlbert: I can read it from here. It's fine.

The Chair: Let us know if you're having any difficulty in any way. We can assist you.

Ms. Hurlbert: It's fine. My name is Tracy Lynn Hurlbert, and I'm here from PUSH Northwest. I'm the secretary of the board of directors. I'll start this again.

Persons United for Self-Help, which is known as PUSH in northwestern Ontario, extend our thanks to you, the standing committee, for giving us the opportunity today to make this submission with regard to Bill 107, that will amend the Ontario human rights act.

Persons United for Self-Help in Northwestern Ontario was incorporated as a non-profit, charitable organization

in 1989 with the mandate to provide a voice for the disabled population of northwestern Ontario.

The Chair: You're speaking too fast for our sign language people. So if you can just slow it down. You have 30 minutes. It would really help us in helping them.

Ms. Hurlbert: Okay. The organization speaks out on issues that may affect children, youth, adults and seniors with disabilities. Our mandate is to advocate for the cross-disability population, which includes anyone with a physical, intellectual, psychiatric or non-visual disability.

PUSH Northwest has representatives with disabilities across northwestern Ontario living in communities from White River on the east to the Manitoba border. PUSH Northwest has a history of working with our municipality, the provincial and federal governments, and the public and private sectors to address barriers and obstacles and plan and develop methods to create a more inclusive community. Our organization is a member of the Council of Canadians with Disabilities, the national organization that advocates for all Canadians with disabilities at the federal level.

PUSH Northwest knows from past history that individuals with disabilities have tremendous difficulties filing complaints under the current legislation due to lack of funding and access to legal professional services that will assist them. It is also known that, due to lack of funding and resources in the current system, complaints often take years to be investigated and settled. In this brief submission, PUSH Northwest supports the positions put forth by both the AODA Alliance and ARCH legal resource centre for people with disabilities in their identification of issues and concerns with Bill 107, and we support their recommendations to improve the proposed legislation. It is our hope that through this community consultation process, Ontario can develop a bill that will strengthen the Human Rights Code and create fairness and efficiency when dealing with human rights complaints.

Our organization would like to highlight the following issues with respect to Bill 107.

Issue one, the accessibility of the human rights process: Disability advocates throughout the province recommend that there be no barriers to accessing the process for filing a human rights complaint. As recommended by ARCH, the tribunal must act to facilitate the ability of complainants with disabilities to come forward with their human rights complaints so they may be heard and decided. As persons with disabilities are statistically poorer and more marginalized than persons without disabilities, the process must be flexible and sensitive to the particular needs of the disabled community.

Some of the barriers to accessibility that exist under Bill 107 are as follows.

Lack of funding for legal advice and representation: Bill 107 doesn't ensure that every human rights complainant will have free, publicly funded legal advice and representation. Section 46.1 of the bill merely states that the Attorney General may sign agreements to pay yet-unnamed organizations to provide legal advice or rep-

resentation. However, it doesn't require the government to fund any, nor that this government funding be adequate. It doesn't entrench the government's promised human rights legal support centre. It doesn't require legal services to be delivered by lawyers. PUSH Northwest supports the recommendation of many disability advocates in the province that section 46.1 be amended to establish a system of high-quality support services to any person who may be a claimant under the act, and to ensure that sufficient resources are allocated to this system. This is particularly important given that Bill 107 abolishes discrimination victims' right to have the Human Rights Commission publicly investigate all non-frivolous human rights complaints, armed with legal investigation powers.

User fees: For the first time, Bill 107 will allow the Human Rights Tribunal to charge user fees for going to the tribunal. Section 45.2 states, "Subject to the approval of the minister, the tribunal may establish and charge fees for expenses incurred by the tribunal in connection with a proceeding under this part." This discriminates against persons of low income and complainants on social assistance, who could not file a complaint if there were costs attached to the process, and may expose human rights complainants for the first time to have to pay their opponent's legal costs if they lose. In the interest of equality, it is recommended that the human rights process remain cost-free.

Third party applications: Under both Bill 107 and the current Human Rights Code, only individuals and the OHRC can file an application to the tribunal. For some individuals, the daunting task of filing their own application is enough to prevent them from initiating the process due to lack of resources, fear of reprisals or emotional stress. Community organizations should be allowed to pursue an application to the tribunal with the individual's consent. This would also allow organizations to use their experience and expertise to address ongoing and routine discrimination practices that otherwise would not be addressed without an individual applicant.

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PUSH Northwest supports the recommendation of ARCH legal resource centre that a provision be included in section 35 to state that an application may be filed "on behalf of a person or groups of persons who have experienced or continue to experience discrimination by any organization with a demonstrated interest in the subject matter or to the welfare of that group of persons. The written consent of that person or persons is required except in the case of systemic applications where such consent is deemed by the tribunal to be unnecessary."

Procedural accessibility: Bill 107 does not articulate the need of the Human Rights Commission to ensure that all of its offices are accessible to persons with disabilities in the areas of communication and information, policies and practices. An example of this can be found in sections 35(3) and 41(1)(c) of the bill. ARCH legal resource centre has noted that these sections can be read together to suggest that if an application does not meet the

tribunal's approved form, it can be dismissed. Applying to the tribunal can be a difficult and confusing process, and claimants should be protected from having applications rejected on the sole basis of proper form. This protection and access to information includes the need to establish regional or branch offices so that the commission is accessible to all Ontarians, which is of increased importance to people with disabilities from northern and remote communities.

PUSH Northwest recommends that delivery of the human rights legislation requires access points located throughout the province, in its regional areas. These access points should provide professional legal human resources as well as funding for individuals to file complaints through known advocacy organizations that have sound knowledge and experience with the discrimination issues that affect people with disabilities.

Physical accessibility: An accessible human rights process requires that all barriers to accessing the physical spaces of the tribunal be removed. Currently, the onus is on the complainant to request any necessary accommodations such as captioning or transcription of proceedings. PUSH and other advocacy groups believe the tribunal should be proactive in the removal of barriers and make it unnecessary for individual requests for accommodation to be made. Therefore, PUSH Northwest supports the recommendation of ARCH legal resource centre that a provision addressing accessibility be legislated under section 37: "The principle of accessibility will have primacy over concerns of efficiency and expeditiousness of the tribunal process."

In addition, ARCH also recommends that accessibility be included in section 34(2) governing the tribunal's rules of practice. The following should be added to this section: "In making rules governing the practice and procedure before it, the tribunal must prescribe practices and procedures to ensure full accessibility throughout its processes."

Dismissal of complaints: Bill 107 doesn't keep the government's commitment that all discrimination victims will be given a hearing before the Human Rights Tribunal. Subsection 41 of Bill 107 lets the tribunal dismiss a complainant on several grounds without holding a hearing, including some of the same grounds the commission currently uses to dismiss cases without a full hearing. Furthermore, section 34 of the bill allows the tribunal to adopt rules that may "provide that the tribunal is not required to hold a hearing," and section 40 gives the tribunal sweeping powers to defer a hearing. An application can be dismissed without any notice or opportunity for the exchange of submissions and arguments. As recommended by ARCH, subsection 41(2) should be removed from the bill, as it can be used to limit the SPPA protections in the early dismissal process.

Reconsideration of dismissal: Under the current code, if a complainant is dismissed by the commission, the complainant has the right to request a reconsideration of that decision. As Bill 107 is drafted, there is no right to request that the tribunal reconsider a decision to dismiss an application.

Appeal of a tribunal's decision: Bill 107 dramatically reduces the right to appeal a decision of the tribunal to court. Now, anyone who loses his or her case at the tribunal has the broadest right to appeal to court. Bill 107 only allows the losing party to challenge the tribunal in court if the ruling is proven to be "patently unreasonable," a far tougher test. As there are no steps in place to ensure that members of the tribunal have experience, expertise and sensitivity to disability and human rights, it is not satisfactory to remove the broad right to appeal a tribunal decision.

Weakening of the Human Rights Commission: Contrary to government commitments, Bill 107 significantly weakens, and doesn't strengthen, the Human Rights Commission's ability to bring cases to challenge discrimination. At this point in time, the commission can launch its own complaints in any case, not just systemic cases. It has investigation powers to get evidence to support its case, and it can seek sweeping remedies to compensate discrimination victims for past wrongs and to prevent future discrimination.

Seriously weakening the commission, section 36 of the bill states: "The commission may apply to the tribunal for an order under section 43 if the commission is of the opinion that,

"(a) there are infringements of rights under part I that are of a systemic nature...."

This only allows the commission to launch its own case in systemic cases. It doesn't define "systemic." Bill 107 abolishes the commission's investigation powers. It stops the commission from seeking remedies to compensate victims for past wrongs, even in systemic cases.

Lessening of OHRC enforcement powers: Bill 107 dramatically shrinks the human rights system's capacity to advocate for and protect the public interest. Now, the Human Rights Commission can seek remedies both for individual discrimination victims and to address the broader public interest. It can do so when settlements of cases are negotiated, and at Human Rights Tribunal hearings. In contrast, under Bill 107, the commission won't be involved in negotiating most case settlements. It won't have carriage of or even be present at many, if not most, Human Rights Tribunal hearings. This bill also gives commission policies the least legal significance possible. It doesn't make commission policies on human rights binding on the Human Rights Tribunal when it decides cases. Section 44 of the bill merely states, "In determining a proceeding under this part, the tribunal may consider any document published by the commission that the tribunal considers relevant to the proceeding." This trivializes the commission's role as a meaningful policy-maker.

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Weak Disability Rights Secretariat: By Bill 107, the McGuinty government seriously breaks faith with 1.5 million Ontarians with disabilities. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After winning the election, the McGuinty government rejected disability community

requests to create a new independent agency to enforce the new disability act. The disability community applauded the new 2005 Accessibility for Ontarians with Disabilities Act, even though it created no new independent enforcement agency. The government said such an agency wasn't needed, since persons with disabilities could use the Human Rights Commission's complaints process to enforce their rights. Now Bill 107 removes most of the Human Rights Commission's public enforcement teeth. This isn't corrected by Bill 107's proposal to create in the Human Rights Commission a weak Disability Rights Secretariat. That secretariat has no public investigation and prosecution powers. The commission previously had a stronger version of that secretariat.

Conclusion: To improve Bill 107, it would be ideal for the government to start from scratch, hold proper time-limited public consultations and then introduce an appropriate human rights reform bill. However, if the government presses Bill 107 forward, Persons United for Self-Help in Northwestern Ontario agrees with the AODA Alliance and ARCH legal resource centre for people with disabilities that Bill 107 should strengthen and improve the Human Rights Code rather than weaken it. It should increase access to the human rights process for persons with disabilities and other marginalized groups. It should allow organizations to apply to the tribunal on behalf of individuals or as groups wishing to address systemic discrimination. Finally, this bill should not remove any of the rights previously held by individuals under the current Human Rights Code.

For further information on this submission, you may contact Ron Ross, president, Persons United for Self-Help in Northwestern Ontario.

The Chair: Thank you very much. About three minutes each; we'll begin with the government side.

Mrs. Van Bommel: Thank you for your presentation. In your presentation, you talk about the appeals mechanism and the fact that you would like to see the ability to appeal the tribunal's or commission's rulings. We've heard a lot of conflicting ideas around this, and I'm feeling a little conflicted myself on this, because we've also had people come and say to us that they would like to see no appeal of tribunal hearings. Their concern is that good rulings are overturned by the courts later. How do you feel about the possibility that an appeal may actually overturn good things?

Ms. Hurlbert: I'm just thinking that one over here. It's kind of hard to understand it; I'm only getting a few lines at a time here.

Your question was about the appealing of the tribunal's hearings?

Mrs. Van Bommel: Yes.

Ms. Hurlbert: I personally feel that if a ruling—I'm just trying to think here; I have so many conflicts here. If a ruling is given by the tribunal, I do think that people should be able to go to court to get it changed in cases where things have not gone through because of a file not being filed correctly or something not being done to

form, submissions of forms. Sometimes I find that the tribunal doesn't rule in your favour just because you haven't got all the paperwork in order. For people with disabilities, sometimes we just can't do it. If you can't, and if you can go to court and get someone to help you there, then I think we should.

Mrs. Van Bommel: Thank you.

The Chair: Mrs. Elliott.

Mrs. Elliott: I don't have any questions, Ms. Hurlbert. I just wanted to thank you for being here today and for your very comprehensive statement. You raised some important issues that we need to be speaking about, so I appreciate your contribution today.

Ms. Hurlbert: Thank you.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. Hurlbert, I was unfortunately not here for the earliest part of your submission; I was here for the latter part. I think I understand the submission, because in many respects it's consistent with the recommendations being made by AODA.

I appreciate Ms. Van Bommel raising this interesting issue about appeal/no appeal. I suppose it's a double-edged sword. Having said that, I'm very hard pressed to suggest that somehow our courts at the appeal level screw things up. What the courts do is apply the law, and if we don't like the law once the court has applied it, that appeal court has then performed a service by permitting us to change the law. I know there's folks out there who say, "Oh, the courts are screwing things up with their rulings." No, the courts—the appellate courts amongst them—apply the law. They give us a chance to understand where the deficiencies are, where the defects are in the law. If we haven't written the law good the first time around, they give us as legislators a chance to approach it a second time. So I know this debate is going to be an interesting one, and I very much appreciate your contribution to it. Thank you kindly, Ms. Hurlbert.

Ms. Hurlbert: Thank you.

The Chair: Thank you very much.

The next group is the Ontario Native Women's Association, Ms. Sally Ledger. Is Ms. Ledger here?

Maybe we can go on to the next group in the meantime, the Nishnawbe-Aski Legal Services, Evelyn Baxter.

It's still early for both of those groups. How about Don MacAlpine? Is Mr. MacAlpine here?

The committee is going to be recessing for about 15 minutes to give people time; we're running a little bit ahead of our schedule today.

The committee recessed from 1535 to 1550.

BRUCE CORBETT

The Chair: Can I have your attention? We're going to the 5 o'clock presenter, Bruce Corbett, and that will be by teleconference. Is he on the phone? Can we get some audio?

Mr. Bruce Corbett: I am, sir. Can you hear me?

The Chair: Hello, Bruce?

Mr. Corbett: Yes, sir.

The Chair: Hi. It's Vic Dhillon. I'm the Chair of the standing committee on justice policy. You have 20 minutes for your presentation. Any time that you don't use will be divided up amongst the three parties for any questions or comments that they might have. So you can start any time.

Mr. Corbett: All right, sir. Members of the committee, as I'm sure you are aware, the Human Rights Code of Ontario has been changed and the Tobacco Control Act has been replaced by the Smoke-Free Ontario Act. That has caused a little bit of difficulty. I'll cut to the chase. I am suggesting an amendment to the Smoke-Free Ontario Act, that all citizens in Ontario over the age of 19 have optional smoking privileges in all enclosed spaces with adequate ventilation.

In the local area, bank staff have been forced to smoke outside the bank, which presents a bad image for the bank. Private sector restaurants and bars have been forced to move smoking outside, which is a quaint custom in the summertime, but in January I see it posing quite a problem. I'd put to you a hypothetical question, but I don't think I need to go any further. I'm open to questions.

The Chair: Was that the conclusion of your presentation?

Mr. Corbett: That's the conclusion of my presentation.

The Chair: Okay. We're starting with the official opposition this time, and that's Mrs. Christine Elliott.

Mrs. Elliott: Thank you very much for your call, Mr. Corbett. I'm not sure if that's something this committee would be able to do something about in terms of being able to proceed with any amendments; however, that might be something that perhaps in the future could be the subject of a matter before the commission. What we're hearing today is people's views with respect to the new act and the changes that it proposes. Do you have any comments with respect to the new legislation?

Mr. Corbett: As I see it, it's highly discriminatory. Anybody who suffers from carcinogens from second-hand smoke has bigger issues than second-hand smoke to deal with. I believe if private sector establishments are supplied with adequate ventilation, all parties can be accommodated.

The Chair: Thank you, Mrs. Elliott. We'll be moving to Mr. Kormos. Mr. Kormos is shaking his head. He doesn't have any questions.

Mr. Kormos: No, thank you, Chair.

The Chair: The government side: Any questions or comments?

Mr. Berardinetti: I just want to thank Mr. Corbett for his presentation today.

Mr. Corbett: It's very much well appreciated.

The Chair: Thank you very much, Mr. Corbett, for your presentation. Bye now.

Mr. Corbett: Goodbye.

The Chair: We'll be recessing again for 10 minutes or so, or until the parties arrive.

The committee recessed from 1556 to 1600.

ONTARIO NATIVE WOMEN'S ASSOCIATION

The Chair: We're resuming the meeting of the committee. I believe Ms. Sally Ledger is here now from the Ontario Native Women's Association. Welcome. We're running a little bit ahead of schedule today, so thank you very much. You may begin your presentation.

Ms. Sally Ledger: Meegwetch. Welcome, everyone. Thank you for coming to Ojibway territory. My name is Sally Ledger. I am the Ontario Native Women's Association's executive director. I commenced as the executive director in June of this year. This presentation is a combined presentation developed in partnership with the Ontario Native Women's Association and the Native Women's Association of Canada.

Incorporated in 1971 as a not-for-profit corporation, the Ontario Native Women's Association is representative of the views and aspirations of native women in Ontario and exists to create a forum through which aboriginal women can effectively address the social, economic, health, justice, employment and training issues that affect their lives and their families.

The philosophy of the Ontario Native Women's Association embraces the principle that all citizens of aboriginal ancestry will be treated with dignity, respect and equality and that our inherited rights and all those benefits and services will be extended to all, no matter where we live and regardless of tribal heritage, beliefs and customs.

The Native Women's Association of Canada was founded as a not-for-profit organization in 1974 on the collective goal to enhance, promote and foster the social, economic, cultural and political well-being of First Nations and aboriginal women within First Nations and the broader Canadian society. NWAC is the only national aboriginal women's group and is an aggregate of 13 aboriginal women's groups from across Canada.

The Ontario Native Women's Association is an independent provincial-territorial organization that is a member and sister organization with NWAC. We jointly made this submission.

Over the past 30 years, the equality interests of First Nations, non-status, Metis and Inuit women have maintained a prominent place in policy discussions about the Indian Act and in general discussions about the human rights of aboriginal women in Canada. This has primarily been the result of efforts by individual aboriginal women and organizations such as NWAC and ONWA—

The Chair: Ms. Ledger, can I ask you to slow down, please?

Ms. Ledger: I'm very nervous, and it's my habit to speak fast. I will try to slow down.

The Chair: We'll remind you if your pace picks up again. Thank you very much.

Ms. Ledger: Okay.

This has primarily been the result of efforts by individual aboriginal women and organizations such as NWAC and ONWA to keep the interests in the public

eye and on the federal and provincial agendas. One high-priority area for our respective organizations has been the promotion and protection of the human rights of aboriginal women in Canada.

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We are mandated to address the needs and the priorities of aboriginal women, who are perhaps the most marginalized and disadvantaged population, having the highest incidence of poverty in Canada—more than twice the rate of non-aboriginal women. It's our belief that aboriginal women are thus uniquely vulnerable to all of the barriers, including access to housing, employment, education, health and other services that are experienced by other low-income people, while simultaneously confronting overt and systemic discrimination particular to our race and our gender.

One of the goals of NWAC and ONWA is to empower aboriginal women by engaging in international, national and regional advocacy measures aimed at legislative and policy reform that promote equal opportunities for aboriginal women, such as access to programs and services. As well, NWAC and ONWA are committed to ensuring that the unique needs of aboriginal women are reflected in all and any legislative and policy directives that have the potential to have significant impacts on our lives and our children.

We would like to thank the standing committee on justice policy for giving NWAC and ONWA the opportunity to express our concerns and make recommendations to strengthen Bill 107. It's our belief that, while often viewed as a champion of human rights in the international forum, Canada has failed to ensure that basic, fundamental standards of human rights are applied to aboriginal people, particularly aboriginal women and our children, in Canada. This is true in relation to many aspects of social, economic, cultural, political and civil rights. Several United Nations bodies have criticized Canada's human rights record and its treatment of aboriginal people. Specifically in relation to aboriginal women, Canada has been criticized by domestic and international bodies for failing to protect the equality rights of aboriginal women.

The provincial government has a significant role to play in ensuring that Canada observes its international obligations and respects and promotes the human rights of all citizens. Substantive law reform and reform to current human rights systems are fundamental for the protection from discrimination and advancement of human rights of aboriginal women. In this sense, we welcome the commitment by this government to address reforms to the current human rights system, including amendments to the Ontario Human Rights Code and human rights mechanisms.

However, we are not convinced that these proposed changes under Bill 107 will result in the kinds of changes that will benefit aboriginal women. We support the position taken by other equity-seeking groups, such as the AODA, and similarly take the position that anticipated changes may result in weakening an already

struggling human rights system. We anticipate that the proposed changes to the current system may weaken Ontario's ability to maintain its reputation as a leader in advancing the human rights of its citizens.

The proposed sweeping changes under Bill 107 to the Ontario Human Rights Code and changes anticipated by the direct access model will have significant impact on the ability of those marginalized and disadvantaged members of society to have access to and redress from overt and systemic discrimination in Ontario. While the proposed changes have been hailed as allowing individuals greater access to human rights tribunals, we believe that the social reality of aboriginal women and other marginalized groups will result in those having greatest needs for protection from discrimination to be even more vulnerable to human rights abuses. Access to a tribunal cannot and should not be equated as access to human rights and accessibility for redress by those most in need of human rights protection.

A key ingredient for a human rights system is that it's accessible and responsive and addresses the needs of those members of society most vulnerable to human rights violations. The Ontario Human Rights Commission consultation report identifies two principles that must be kept in mind. The first is that the complaints resolution process should be first and foremost about the people. Any system design should consider the experiences of those actually using the system and how it feels to them—

The Chair: Ms. Ledger, just a little bit slower. They're still having a bit of difficulty.

Ms. Ledger: A second principle: While the complaint resolution process is concerned with resolving individual disputes, it is not only for that. There is public interest at stake in the resolution of these issues.

Therefore, any amendments to the Ontario Human Rights Code, Human Rights Commission and tribunal process require much broader public consultation, particularly with those of marginalized communities and individuals most in need of human rights protections and redress.

While we feel that much more consultation is required, we are prepared to offer recommendations in four broad, overarching areas that are essential to strengthening the current and proposed changes under Bill 107. These include:

- (1) accessibility;
- (2) defined jurisdiction and adequate power;
- (3) operating effectively and efficiently; and
- (4) independence and accountability.

An effective human rights system requires that state institutions are readily accessible. Prominent factors affecting accessibility include physical location design and geography, employment of communication technologies, timeliness of services and representation by staff of the community served.

Accessibility issues also include lack of access to legal representation, complexity of judicial and administrative costs, inordinate delays, lack of knowledge of the system,

geography, lack of accommodations for disability, language and cultural barriers, marginalization and lack of trust, and receptivity and perception of service.

Accessibility is perhaps the most important factor in considering changes to the current human rights system. The current model of human rights has remained relatively unchanged since it first came into being 40 years ago. Since that time, the population demographics and the needs of those who rely on human rights mechanisms have changed drastically in Ontario.

For aboriginal people, the social reality is that there is a growing number of aboriginal people living in urban and rural settings. It's estimated that approximately 75% live off-reserve. Poverty is a fact of life for too many aboriginal people, who remain at the lowest level of the population, lagging far behind the rest of Canada on all socio-economic indicators. There can be no denying that aboriginal women in particular have borne the brunt of years of colonization and assimilation practices carried out by the Canadian government, and are further marginalized even amongst the aboriginal population as a whole, as evidenced by socio-economic disadvantage and marginalization.

While poverty is a key factor in acquiring access to basic human rights, such as the right to adequate housing, adequate health services and educational and employment opportunities, many times overt and systemic discrimination further compounds our problems. For example, in the area of housing, we continue to hear that even though there are human rights laws that prohibit discrimination based on race and gender, our women continue to experience being denied access to leases from landlords because they are visibly native. In fact, NWAC has fielded many calls from aboriginal women across Canada on many potential human rights violations, and our organization directs these women to file a claim with their regional Human Rights Commission, which will investigate and guide them through the complaints and tribunal process, as many do not have the means to hire lawyers and pursue other avenues of redress.

One of our issues is whether the proposed Bill 107 direct access model is responsive to the needs of those who will receive its services and whether human rights will be more accessible. In the opinion of NWAC, the proposed direct access model will weaken existing avenues of redress for violations under the Ontario Human Rights Code. Having direct access to a tribunal does not mean that redress from discrimination will be more effective or timely or accessible for an already underserved population such as aboriginal women.

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In fact, we are of the opinion that these kinds of reforms will lead to a further judicialized human rights process, whereby members of already marginalized groups will have less means to access avenues of redress by making the system overly complex and dependent on access to legal representation. Many of our constituents do not have the necessary means to investigate their own claims and obtain lawyers. The purpose and function of

an administrative law system and the role of the Human Rights Commission will be compromised and the legal and financial barriers will act as a deterrent for many aboriginal women.

Power imbalances will be heightened as claims are forced into an adjudicative model, and it will be further detrimental to those without the means to acquire adequate legal representation. It is unclear whether the proposed resource centre and/or publicly funded legal representatives will be readily available for those marginalized communities that wish to pursue claims against respondents such as landlords, business owners, employers or government departments, who have the financial means and resources to drag cases out for years.

We recommend that the current Bill 107 could be strengthened by giving proper resources to the publicly funded Human Rights Commission, which plays an important role in investigating and pursuing individual claims through the tribunal process as well as on behalf of the public interest.

However, to improve accessibility to the Ontario Human Rights Commission, the commission needs to be staffed to reflect the claimants it serves and have offices in rural and geographic locations, perhaps even a circuit-type commission and tribunal hearings that will better meet the needs in those rural, far north and remote areas.

The OHRC and the tribunal process must be accessible by the most vulnerable members of society and must be free of barriers such as financial costs, user fees and dependence on legal representation, which would act as a deterrent to pursuing discrimination claims by the most vulnerable members of society. This should be the rule and not the exception, or at the very least a guiding principle for a newly reformed human rights system.

The role and importance of the Human Rights Commission and tribunal: An effective human rights system relies on the co-operation and participation of many players, including government, NGO advocates, unions and associations. In Canada, human rights commissions have played a significant role and have been the cornerstone of the Canadian human rights model. For commissions with a broad mandate to be effective, there is a need to be independent of government interference, and they require the ability to investigate individual complaints, resources to promote human rights and educate the public, and the ability to pursue systemic discrimination complaints on behalf of the public interest for prevention of discrimination across the government and private sectors.

NWAC recognizes the important role that the Human Rights Commission and tribunals play in upholding the principles of equality and protection for those most marginalized and disadvantaged communities in Canadian society, such as aboriginal women, visible minorities, people with disabilities and other segments of the population that are vulnerable to discrimination. While we feel human rights tribunals are an important aspect of the human rights system, we feel it's necessary to underscore

the vital role that the commission plays in bringing claims of an individual complainant or equality-seeking group—who most often do not have the resources to launch such broad-based investigations, recommend broad-based systemic changes and pursue claims on behalf of the public interest—and in promoting equality and the human dignity of all members of society.

The commission plays a unique and integral role in supporting individuals through the human rights process and by pursuing broad-based systemic claims. For example, in 2001, NWAC, along with other equality-seeking organizations such as the Canadian Association of Elizabeth Fry Societies, successfully launched a joint human rights complaint with the Canadian Human Rights Commission to address systemic discrimination for federally sentenced women in correctional institutions. In 2003, the Canadian Human Rights Commission released its report titled *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women*. The report concluded that there is systemic discrimination and that aboriginal women, racialized women and people with disabilities were particularly vulnerable, and made 19 recommendations that CSC must fulfill to ensure that it is acting consistently with human rights laws in Canada. Many of those broad-based systemic claims may not otherwise have been pursued by individual women in prison or by community-based organizations because of the human and financial resources necessary to pursue such a claim and move it forward.

An effective and independent commission also has the ability to take on a proactive initiative on its own, and in this way they play an important role in ensuring that government departments, laws and regulations are consistent with human rights laws. For example, in another instance, the Canadian Human Rights Commission was instrumental in bringing to light a proactive initiative, a report on section 67 of the Canadian Human Rights Act, which exempts the Indian Act and actions pursuant to the Indian Act from human rights scrutiny. It is necessary to preserve and enhance the ability of the Ontario Human Rights Commission to act as an independent player with the powers and adequate resources to fulfill a broad mandate to pursue claims on behalf of those marginalized in the province and to work co-operatively with not-for-profit and community-based organizations dedicated to ending discrimination and promoting equity in Canadian society.

Another issue for us is whether Bill 107 will assume the role and function of the commission and give the tribunal expanded gatekeeping functions, both of which will not benefit the most marginalized and disadvantaged in Ontario.

The proposed Bill 107 direct access model proposes that individuals will have direct access to the Human Rights Tribunal process, thereby seizing the vital role the commission has played in supporting individuals with very limited resources by investigating and pursuing claims through the tribunal process on behalf of the public interest.

This has the potential of amounting to a privatization of human rights. Individuals and the broader public will bear the cost and brunt of this kind of shift because the newly constituted commission will have limited capacity to support individuals and pursue claims on behalf of the public interest. Similarly, individuals who do not have the financial means and resources necessary to investigate their own claims and hire their own legal representation for the tribunal hearings will be at a serious disadvantage under Bill 107. This, we feel, is a strong deterrent for those who have already limited resources to pursue cases, such as our women.

This proposed direct access model will not mean that all individual claimants will have access to an impartial and accessible decision-maker in a timely and effective manner. Rather, the proposed amendments will shift the gatekeeping function played by the OHRC to the OHRT and give the tribunal unfettered discretion to dismiss claims without a formal hearing proceeding. This may deter most from pursuing claims, and those who do will not have an avenue of appeal or redress from decisions of the tribunal, as the tribunal will have significant powers to dismiss a claim without an open and fair hearing.

In our opinion, the direct access model, as proposed by Bill 107, will have a very significant impact on the poor and those with the least means to protect and advance human rights claims. In fact, as stated earlier, these kinds of reforms will move human rights procedures to an adjudicative model by making the system overly complex and dependent on access to legal representation. Members of already marginalized groups will have less access to avenues of redress for violations of human rights. Many of our constituents do not have the necessary financial means to investigate their own claims and obtain lawyers. The purpose and function of an administrative law system and the role of the OHRC will be compromised. Only those with the resources to access the direct access model will be able to pursue their human rights complaints. The financial and anticipated systemic barriers will act as a deterrent for many aboriginal women.

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It is recommended that for a human rights system to be effective it should create rights and not take them away by being inaccessible to those who depend and rely on a fair, impartial, effective, efficient and accessible redress model.

It is recommended that Bill 107 be strengthened to be responsive to the needs of, and ensure accessibility by, the most vulnerable members of society by maintaining the jurisdiction and even expanding on the role and purpose of the OHRC and by providing the OHRC with adequate powers and resources to fulfill its broad mandate.

It is further recommended that individuals could be given the choice to have direct access to a Human Rights Tribunal, and others, with less means to pursue that choice directly, should have the option of having their claim investigated and pursued by the support of a publicly funded OHRC.

Because the equality and dignity of every human being is a fundamental and inalienable human right, the effectiveness of a human rights system should not be compromised solely by arguments of operational efficiency. It is unclear as to whether the proposed reforms under Bill 107, including the direct-access model, will make the resolution of the human rights system more effective and more efficient. What is clear is that there is a need for reform and improvement in the way most cases are currently processed, including the time it takes to make a claim.

The issue we have is whether the proposed Bill 107 direct-access model reforms will make the human rights system more effective and more efficient. The key issue is how best to balance the need to process claims in a manner that is efficient while being viewed as effective by those who rely on a fair, impartial, accessible and timely resolution of their human rights claims. The main criticism of the current system is the length of time it takes under the current OHRC system, which has an obligation to process every claim filed, followed by a lengthy investigation process, with many claims being settled by mediation and few being referred to the OHRT.

Although commissions are a cornerstone of our human rights system within federal and provincial jurisdictions, Human Rights Commissions in almost every jurisdiction have been seriously underfunded and under-resourced for years. This is true despite the social reality that more and more people rely on these essential services and despite the growing need for independent Human Rights Commissions to advance the equity interests of individuals, including the right to live free from discrimination.

Under Bill 107, it is advanced that giving individuals direct access to the tribunal process will make things more effective and the resolution of human rights claims timelier than the commission. However, there is no guarantee or evidence offered that would support the position that giving individuals direct access to tribunals will speed up the claims process.

The Chair: Ms. Ledger, can you slow down? You've picked up speed again. Thank you.

Ms. Ledger: Assuming that an aboriginal woman has the resources to investigate her own claim and hire her own lawyer to bring her case forward to the tribunal, shifting the gatekeeping function and having the tribunal operate as judge, jury and final decision-maker will require a significant degree of procedural fairness. Under an enhanced adjudicative model, the wheels of the human rights resolution process would surely come to a grinding halt.

In our opinion, operational efficiency and procedural fairness and effectiveness may mean that some claims and claimants are treated differently. For example, some claimants may want to proceed directly to the tribunal process and their claims may not require the rigor of an investigative process laden under the current OHRC. However, others claimants may need support and guidance through the process. Their claims may be complex

and systemic in nature and thereby could benefit from the commission playing a more active role in the investigation and pursuit of the claim through the tribunal process on behalf of the individuals and in the public interest.

It would be more effective and efficient to streamline cases by giving individuals the opportunity of proceeding under an adequately resourced, enhanced OHRC or having direct access to a tribunal process, as opposed to treating all claims and claimants the same, i.e., having access only to a Human Rights Tribunal process or forcing those unwillingly into a Human Rights Commission process.

The social reality is that all human rights claims and all those who want to file a human rights claim are not the same; for example, some in an employment relationship may want direct access to a tribunal for a quick decision that may preserve the relationship, while others, such as a complex systemic claim that will affect many, may want the resources and level of investigation and public interest remedies that the OHRC may be equipped to provide. By allowing choice, this would create efficiencies and strengthen the effectiveness of the operations of the human rights system as a whole.

It is recommended that the provincial government use this unique opportunity to reform and strengthen the operational—

The Chair: One minute left, just to let you know.

Ms. Ledger:—effectiveness and efficiencies of the current human rights system by creating options and alternatives for the residents of the province of Ontario. Having access to an adequate OHRC process and having direct access to the OHRT need not be an-all-or-nothing approach.

Another issue that we have is whether Bill 107 will resolve the outstanding issues of accountability and independence of the Human Rights Commission.

If I had spoken faster, I would have gotten it all in. At this point, I will just summarize and let you know that we have handed in a hard copy. There are recommendations. Our key areas of concern are accessibility, an adequately resourced process and ensuring that we have additional consultation. Unfortunately, we have not been able to meet with all of our members and get additional input.

Meegwetch.

The Chair: Thank you very much.

NISHNAWBE-ASKI LEGAL SERVICES CORP.

The Chair: The next group is the Nishnawbe-Aski Legal Services. Welcome. Good afternoon. If you can state your names for Hansard, please.

Ms. Claudia Belda: My name is Claudia Belda and this is Mary Jean Robinson. We are here representing Nishnawbe-Aski Legal Services Corp. We are both lawyers. Mary Jean is the legal aid area director in our office and I am the legal education and communications officer. If you look at the packages that we've provided

for you, you will be able to take a quick look at some background information about us and our organization, so I'm not going to take an awful lot of time to introduce ourselves.

Nishnawbe-Aski Legal Services Corp. represents all the Nishnawbe Aski Nation communities. There are 49 of them and they belong to Treaty 9. We serve approximately 30,000 people on and off reserve. The geographic territory that we cover is approximately two thirds of the province of Ontario, extending from the Manitoba border on the west all the way to the James Bay coast on the east. You can take a look at the maps that they're handing out right now.

The mandate of our organization is to address legal and justice issues as they relate to Nishnawbe Aski Nation and its members, as well as to further and protect the rights of those members. We are mandated to promote alternative, community-based justice systems and to deliver legal, paralegal, public legal education, restorative justice and law reform services.

Since we have limited time to present to you today, I will begin by addressing the points that we think are in need of revision and why, and then Mary Jean Robinson will contribute some of her personal experiences regarding access-to-justice realities faced by NAN members.

Like many people here today, we happen to agree that it is time to make some changes; however, Bill 107 cannot be enacted into law as it currently stands.

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We also agree with many of the things that have been said by the presenters before us and, like all those other groups, we have concerns about the proposed legislation in terms of how it will impact those people we represent.

We have identified five main points of concern for our clients, all of which are either part of the current Bill 107 or are missing from it.

- (1) There's no right to a free investigation.
- (2) There is no explicit right to free legal representation.
- (3) There are user and legal fees.
- (4) Only individuals or the commission can file an application, which means that there is less chance of systemic issues being brought to the tribunal.
- (5) There are expanded grounds to exclude complaints and a limitation of reasons for appeal.

Why do we have such concerns? We appreciate the fact that the government is trying to streamline a system that has been problematic in the past. However, we do not want the government to do it in such haste and without the public opinion that may shed helpful light on the implications of what the government is trying to accomplish. In an effort to provide some guidance, we propose the following amendments, many of which I am sure you have already heard today.

In terms of lack of free investigations, if the tribunal is to be the direct access route, the tribunal and the individual involved should be provided with the same investigatory powers that were given to the commission, or, as an alternative, give complainants a choice between

accessing the tribunal or opting for the commission to conduct an investigation of their claims. By giving them a choice, you can continue to speed up the process for those who already have all the proof they need, while at the same time maintaining protection for those who depend on or prefer the investigatory powers of the commission. As such, we're urging you to allow the commission to retain some of the powers that it already has and that have in the past been used to the advantage of legitimate complainants.

On the issue of legal representation, we need the establishment of fully funded community-based centres to provide advocacy services on behalf of the clients, and they need to have a specified funding budget as well as a reassurance that any funding changes will be approved by the Legislature as a whole and not just by the minister. We also need to have a list of the services that will be performed by the proposed human rights legal support centre. We would also like to see entrenched, ongoing and free legal support, assistance and representation for the complainants, as well as a publicly available central list of where this help can be accessed. We want the bill to include a guarantee of representation and assistance throughout the entire case for complainants from a publicly funded lawyer. As it stands, there is no requirement that assistance will come from a lawyer or any other qualified source.

In regard to user fees and resources, the bill is creating financial barriers for victims of discrimination with the threat of user fees. Though we understand that the threat of user fees is supposed to be a deterrent in order to prevent complainants from bringing frivolous cases forth, since the tribunal has the discretion to accept cases that it believes to have merit, we think this is a moot point. There should not be user fees, and no legal fees should be awarded against complainants who have a legitimate complaint. It is also helpful to point out that if the commission were to retain its investigatory powers and make them available to complainants in a broader-based and more public process, it would save the tribunal time in determining which cases to accept on the basis of evidence. In addition, we would also like to see resources allocated to the tribunal to travel to all regions in the province to hear cases, including northern reserves. If the Attorney General is committed to access-to-justice issues, then he must include First Nations who are in remote and fly-in reserves.

We also support a re-examination of the expanded grounds for refusal and the limitation on grounds for appeal. We do not think that preventing cases from getting a hearing or refusing appeals for valid complaints that may not necessarily fall under the proposed changes embodies what the bill is really trying to accomplish.

We also want an amendment to the bill to allow applications to be brought before the commission or tribunal by representative third parties such as community organizations, band councils or other groups who may be more able to recognize systemic discrimination and practices.

Another general point we would like to bring up is an amnesty period for those cases that are already in the system as it currently stands. We have heard—and you can correct me if I'm wrong—that all the discrimination cases that are already in the system will be forced to start over, with the tribunal as their starting point, as soon as the bill becomes law. That's creating backlogs and anger from complainants. If the idea is to speed up the process, this would make the elimination of most of the powers of the commission a mistake.

The reasons why we would like to see this bill amended are as follows. The people we represent are already marginalized First Nation groups. They experience constant discrimination due to their skin colour, where they live, their cultural beliefs and more, both as a group and as individuals. They're also often discriminated against by government and a justice system that has not yet learned to deal with aboriginal justice issues. Through Bill 107, you will be further discriminating against this large group of people who are already economically disadvantaged.

We understand that you are advocating Bill 107 on the basis that it will improve access to justice for the people. However, it is in fact doing the opposite by forcing people who do not have the economic means or the cultural inclination to conduct their own investigations to abandon otherwise legitimate complaints.

As you are already aware, many types of discrimination are difficult to prove. The discriminatory actions may be covert or unconscious. Every year, the commission turns down many applicants on the basis of a lack of evidence. However, without guidance as to the type of evidence that they should be looking for and without the investigatory powers of the commission, an individual has virtually no chance of gathering enough evidence to make a claim. For example, who is going to force employers to give out information? The employee is certainly not in a position to do so, and our clients certainly cannot afford to lose their jobs or pay user fees to access the tribunal. Moreover, even if they did manage to find enough evidence for their claims to proceed, they will never have resources equal to those of the people they're up against.

The bill has pledged support for anyone who requests it. However, even we often have a hard time providing similar information to all NAN members. Who is going to be responsible for letting isolated northern communities know where they can get help? How will this be done? This help is supposed to come from a human rights legal support centre, and yet there is no mention of this centre in the bill. Even if this centre were to be created, it is likely to only be found in large urban areas—I'm assuming that this help would be provided in Thunder Bay, if it is provided in the north at all. So what happens with the rest of the northern community? The support staff for a project of this magnitude is not available at this time, and we don't know what type of training or changes have to be laid out for this to happen. Furthermore, how will clients in the north be able to access this help? They

will likely have to travel to Thunder Bay or elsewhere, at great and prohibitive expense.

News releases and backgrounders regarding Bill 107 have pledged individuals the right to publicly funded legal support, yet the bill doesn't actually mention that anywhere. At least under the current model, individuals are entitled to the support of a free commission lawyer. Now they will be forced to hire their own lawyers to guide them through the complicated tribunal process. Our clientele just can't afford that. These are people who are mostly dependent on legal aid certificates to deal with their claims in the justice system, and even if they were able to jump over the monetary hurdles thus far, the fact that in the event of a loss they will be liable to pay for costs will certainly make them think twice about starting a claim in the first place.

In addition to all of the above, we feel that the proposed changes would also result in legitimate systemic cases of discrimination not being brought up before the relevant authorities. By eliminating the commission's role, you are eliminating the illusion that these cases are a publicly managed issue. Since now the system is shaping up to be similar to the justice system in that they are becoming interactions between individuals, it would certainly hurt any chances that we have as a whole to create human rights changes that will affect all First Nations. We would like to see the bill amended so that it legitimizes third parties to bring discrimination cases forth on behalf of First Nations individuals or communities.

Moreover, the direct approach that is meant to reduce backlog is unlikely to do so. The tribunal will instead be burdened with the task of trying to sort out which cases it would likely hear rather than concentrate on just hearing the cases. It will ultimately result in the same backlog, despite the fact that fewer cases will be heard. Access to justice for our community members will once again be restricted.

Our position is that we agree that it is time for changes to be made to human rights legislation. However, we do not think that those changes are the ones currently found in Bill 107. We believe that in order to really serve those who are in need, sweeping amendments need to be made to it. What we have touched on is only a small part of the changes that need to be made.

To recap, this bill will manage to roadblock our clients in many ways. Many of our clients are shy, in large part due to cultural issues. Often they want to preserve their anonymity, and often they have to deal with the issue of reprisals. The emotional cost of having taken a discrimination claim to the tribunal or the commission and seeing the case come to a conclusion is huge for them, but they also lack the resources to even get their case that far. I think this is evident from the low number of complaints actually received by the commission from aboriginal people, despite the fact that they're one of the groups that is most victimized.

As the legal aid area director and as a lawyer who has had experience working in the north for several years,

Mary Jean Robinson can provide you with some anecdotal evidence of the hurdles that Bill 107 will impose on Nishnawbe Aski Nation members.

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Ms. Mary Jean Robinson: Hello, and thank you for being here to hear these presentations today. Although I am presently the legal aid area director at Nishnawbe-Aski Legal Services, which means administering the Legal Aid Services Act for on- and off-reserve members of NAN communities, I have for many years practised in private practice in the remote north and in the city of Thunder Bay and across northwestern Ontario for First Nations people individually, for communities and for bands.

I would start out by saying that if you want to look at what not to do, the first thing you need to look at is your FRO, your Family Responsibility Office, which went from bad, terrible to worse and atrocious. In the early days of my practice, we had a Family Responsibility Office here that the lawyers accessed, that the people accessed, and it worked. Now if you're attempting to pursue an FRO claim—and I know this isn't human rights, but it's an analogy—they say, "Well, where is he? You go find him." Yet the government has the drivers' licences, the car registrations, the income tax, the GST and all of the other resources to investigate. So the net result is that nothing happens because these people do not have the resources to investigate their own claims.

The Criminal Injuries Compensation Board is another one. You say, "Well, fill in the form." The simple form for the common experience payment for elders right now is one of the simple forms that's out there that may seem simple to everyone around this table; it is not simple, it is not straightforward. So simply putting your case forward—if you make a mistake in putting your case forward, you can get tossed just because your paper didn't match what was required. Again, turning to the common experience payment, people's claims get booted out because the government says, "Sorry, we have no records of that school at that time. We know it was there, but we don't have any records. So you go out and get your own record and let us know." These people cannot do that.

What we're trying to do here by amending this legislation is to improve access, and not just to improve access, i.e., you can come before the tribunal now, but to ensure that everyone who has a human rights complaint can bring that complaint forward. That requires, for our population, I would say 75% of it, representation. It's not something they can do themselves. It requires a knowledge of the legislation. It requires a knowledge of whether you're in the Canadian human rights system or the Ontario human rights system, which is an issue we get all the time with labour law. There are distinct differences on whether or not you are in the federal or the provincial. You can be on-reserve and be in one or the other.

So those are the kinds of issues that, quite apart from language, from culture—if you come from a culture of

not complaining, how are people encouraged to say, "This happened to me," and "I'm hurting," or "I want redress"?

The other issue which Claudia and the people before addressed was cost, fees. As a lawyer, I've written and I've had clients receive those letters that say, "Here's your \$10 offer to settle, and if you don't take this reasonable offer, it's going to cost you \$2,000," and the client goes, "Oh, my God. I don't have \$2,000. Let's take this offer." People are intimidated. So you have to constantly watch that if one side has a lawyer, both sides have a lawyer, so that there is a level playing field.

The first point is the point of access. People do not have access to the Criminal Injuries Compensation Board, because there's no one in the remote doing that. From Legal Aid Ontario's and our community legal workers' side, we are defence-side bar.

Now, when one looks at how all of this is going to get funded and so on—and I'm sure all of you have heard about the Legal Aid Ontario sustainability campaign. We're already grossly underfunded, and we already have people who are denied legal aid because the crown is not looking for a period of incarceration. So if you're charged with a criminal offence and the crown says, "Oh, well, 12 months' probation," and the person says, "I didn't do it," they can't get legal aid. So to say, "Well, you can go before the judge and tell the judge your story," well, the fact of the matter is that they can't and they don't. They're intimidated. It's not their system, they don't use it in that fashion, and they end up pleading guilty. We get a huge number of guilty pleas where, had they had representation, they would likely have succeeded in a defence.

So dollar access—who's going to get representation, and where are the dollars going to come from for this representation?—and ensuring that there are offices. We all have all the nice, new, modern technology, and we make the phone calls with the 14 layers of menus that people with a good command of the English language can barely manage. Anyone for whom English is a second language is just going to hang up after the third layer of the menu. So all of this technology does not work for the clientele we represent. You cannot be depending on websites for information. You cannot be depending on voice mail, information disseminated in that way. It will not work.

So as you've heard over and over today—and we in the north are really good at saying, "Geography, geography," but the fact of the matter is that geography is huge. Let me give you an example of someone who is arrested in Pickle Lake. He or she is taken to Kenora for a bail hearing, is released on conditions, and they say, "Bye." There is no bus to Pickle Lake. There is no public transportation to Pickle Lake. These are broader systemic human rights issues—for example, someone who is released and is told they can't go home. Where in Toronto would you ever say to someone, "Well, yes, the crown is consenting to your release, but you can't live in Toronto. You have to go live in Niagara Falls, and by the

way, we'll pay for you to get to Niagara Falls, but you have to get yourself back to Toronto for court?"

These are the kinds of systemic human rights issues that, although they're not directly in this bill, when anyone is dealing with human rights in the north, are issues that we deal with every day: seniors being phoned for money because somebody can't get home, because the government took the person somewhere else. In fairness, the crown attorney's office is very good about some of the fly-ins, and we do our best to make sure nobody is on the road in the dead of winter. But it's a danger and it's a huge human rights issue that would not be tolerated anywhere else, and part of it is that you people don't know. How many people here realize that someone is released to make their own way home, 300 kilometres, with no money? They might not even have a winter coat with them.

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I don't think I have anything, really, to add. Claudia is much more versed in it. I'm only here today because our executive director got called away. So I'm standing in for Evelyn Baxter as well as representing Legal Aid Ontario.

We are the only area office that is operated outside of Legal Aid Ontario. All of the other legal aid area offices are directly employed by Legal Aid Ontario. So our area office is unusual in that respect. We're sort of one-off, and we appreciate it but we certainly struggle with all of the problems that legal aid has.

I guess the final factor would be public legal education. We do operate a public legal education process, but access to information is really difficult and has to be delivered face to face. Websites are nice and I would not discourage anyone from having a website; I think they're great. Increasing numbers of people have this access, but we also have a huge population that doesn't have any clean water or doesn't have any running water. So having a computer and being hooked up is pretty far down their list of things to do.

I have nothing more to add to what Claudia has had to say, except: Use the FRO and the Criminal Injuries Compensation Board and those kinds of existing tribunals as one of your guidelines when you look at what not to do in ensuring that what you're doing is increasing accessibility and not limiting it. Your numbers should increase. If you increase accessibility, your numbers should increase. But I would suggest to you that if you implement this bill in its present form, your numbers will decrease, your costs will decrease, but access will be non-existent for a huge number of people.

The Chair: Thank you. We'll begin with Mr. Kormos. Two minutes each.

Mr. Kormos: Ms. Robinson and Ms. Belda, thank you very much. Ms. Belda, there are several lawyers on here, but even the non-lawyers, I think, get incredibly excited when we see bright young lawyers working in areas like this. I really do, and you were very effective here today. Ms. Robinson, you've got a few more years on her than—you have a few more years on her. You're almost my age, I'm sure. A very valuable contribution.

Marlene Pierre was here earlier today. She got onto the list at the last minute. She's a spokesperson for aboriginal women, amongst other things.

If we were to go somewhere to observe—some of us have been, especially up on the east side, on the James Bay, Hudson Bay coast areas. But if we were to go somewhere as a committee to see first-hand and witness first-hand some of the difficulties you speak of—and I agree with you; I think in so many ways, almost everyone does—where would you suggest we go? Where would we go, as a committee, to have people address us dealing with some of the very specific things you spoke to? Here's the map.

Ms. Robinson: Off the top of my head, I would say Pikangikum.

Mr. Kormos: Where? Help.

Ms. Robinson: West side.

Mr. Avrum Fenson: Yellow dot.

Mr. Kormos: Yes. Right here?

Ms. Robinson: Right. That would be one. Sandy Lake.

Mr. Kormos: Right here.

Ms. Robinson: Sandy is a big community. Both Sandy and Pikangikum are a fairly significant size, and for us, a significant size is over 1,200. But I think it would also be important for you to see one of the very small communities, maybe Poplar Hill.

Mr. Zimmer: Where?

Ms. Robinson: I don't have a map in front of me.

Mr. Zimmer: On the west?

Mr. Kormos: Right here, right by the Manitoba border.

Mr. Zimmer: Oh, yes. Okay, thank you.

Ms. Robinson: It doesn't show on this map, but NAN territory is divided by tribal councils, and each of our community legal workers works with a tribal council. For example, out of Thunder Bay, you will get the Matawa tribal council and—I'm trying to think of—we're in three zones. You've talked about the fact that you've been up to the James Bay coast, and that would be one of our zones. The communities I've given you now would be our western zone, and in our centre zone would be Webequie or Nibinamik.

Mr. Kormos: The Chair's going to cut me off, in any event, because he's going to say I've used up my time. Thank you kindly. Can you imagine, folks, though? It's one thing to live in one of these communities, so isolated, so remote. Can you imagine being disabled, being deaf or—

The Chair: Thank you, Mr. Kormos. Anybody from the government side?

Mr. Kormos: —not being ambulatory in one of those communities?

The Chair: Mrs. Van Bommel?

Mrs. Van Bommel: Thank you very much for a very interesting presentation. I certainly appreciate the map because it gives us a real sense of the span. I'm trying to get a sense—are you the only legal service for this entire area or are there others?

Ms. Robinson: No, we're it.

Mrs. Van Bommel: You're it. So you're serving all of this?

Ms. Robinson: We serve all of the 49 NAN communities and we serve Treaty 9 NAN band members, both on and off reserve, throughout northern Ontario. So we go all the way down to North Bay. In the remote communities, we provide the duty counsel—and these are combined courts, so what's there is criminal, youth court, family court, child welfare court, all in one day. We provide all of the duty counsel, the community legal workers, the restorative justice workers. The airplanes are all organized through our office. There is no one else working in the remotes.

Mrs. Van Bommel: The significance of the colours of the dots? Is it by size of community or—

Ms. Belda: By tribal council.

Mrs. Van Bommel: By tribal council. Okay, thank you. So it relates to down here.

Ms. Belda: Yes.

Mrs. Van Bommel: That's great. Thank you.

The Chair: Mrs. Elliott.

Mrs. Elliott: I would also like to thank you for your very effective presentation. What it has really illustrated to me, when you talk about access to justice, is not just access to human rights assistance, not just the idea and the right to have the ability to bring it forward in a legal sense, but in a physical sense the difficulties that you face in terms of being able to have someone help fill out the forms. One of the things you were talking about: having perhaps circuits and having people go to visit the more remote communities in order to bring human rights abilities to them, where it's very difficult for them to come to another major centre. I think what you're illustrating for us is that to be effective, you need to really have that physical presence. That's an important component of the whole piece, and we really need to think long and hard about it. So thank you very much.

Ms. Robinson: I might add that if there's going to be a tribunal and the tribunal is going to sit, the tribunal needs to sit in the community. It has been a huge problem. In my days of private practice, I can tell you that in one instance—this was a labour claim—the arbitrator refused to go up into the community and held the hearing in Geraldton and there were no witnesses because they didn't have an airplane. So it's really important to keep those things and those costs in mind.

The Chair: Thank you very much.

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DON MacALPINE

The Chair: Next is Mr. Don MacAlpine. Welcome, and good afternoon. You may begin.

Mr. Don MacAlpine: Good afternoon. For your information and further consideration, I left a hard copy of the text of this presentation here and I left the appendices as an electronic copy on a floppy diskette. The hard-copy

materials will include only the summary presentation I make here.

First, a brief personal history: My name is Don MacAlpine. I was raised on a farm in southern Ontario. I came to Lakehead University in 1971 to train as a forester. I officially became a professional forester in 1977 as I worked in private forestry businesses. In 1981, I moved to Nipigon, Ontario, my current place of residency, and served as a government forester. I emphasize that I served under three different political parties. I left government service in 1996 and started to work with First Nations on forestry issues as I tried to write a book on forestry. I also entered the realm of private business after discovering marble deposits in the Nipigon area. In 1997, I was elected to Nipigon town council and served until 2000.

Why am I here? Snippets of my personal history, and especially circumstances that began in 2002, should lead this committee to a better understanding of its duty, but more importantly, its collective responsibility to each and every citizen. A bill supposedly relating to human rights, Bill 107, is under debate here today. My conclusion will be simply this: There is too much hypocrisy about human rights in this very room, which should end today. I hope that this committee collectively starts to take its responsibilities more seriously.

Human rights? Human rights codes for Ontario? First, let me take you to my grandmother's kitchen when I was a teenager in the late 1960s. I saw the tears stream down her face as she told the story of her brother, my great-uncle, choking to death on lungs damaged by mustard gas. He was there, on the bloody fields of Europe, I was told as a student in school, to defend the freedoms and rights of Canadians during World War I.

I then heard the story of my father being trained as a militia man on the muddy fields near Chatham, Ontario, during World War II. He told of the fear he had as he dragged a heavy rifle and bayonet under rows and rows of barbed wire through the mud as live machine-gun rounds whistled overhead. Nazi subs had been spotted in Canadian waters. The sons of farmers were once again being called upon to be prepared to spill their own blood for our freedom, as hundreds of thousands disappeared again into the soils of Europe.

I then heard the story from my uncle, my father's brother, of throwing dessert in with the main course in a tray in the trenches of Korea. He said it did not much matter what the food tasted like as shells exploded nearby, bullets whistled overhead and men died around him.

Since 2002, I have been forced to become like a lawyer. In irony, I learned that my uncle served in one of the first United Nations-endorsed actions intended to defend the defenceless against those who put no value in human rights and freedoms. In irony, I learned that Canada joined a league of nations, declaring "Never again," and that my country became instrumental in drafting and then signing the United Nations Universal Declaration of Human Rights on December 10, 1948. In fact, Canada

reaffirmed its commitment to the principles set out in that declaration in 1998, and it adopted similar wording in its own much-lauded Charter of Rights and Freedoms of 1982.

Pardon me, but I have been forced to read laws and become like a lawyer. So why do I charge this committee with much hypocrisy? This committee calls itself a committee of justice considering amendment to Ontario's Human Rights Code. Well, let me first remind this committee about some wording my relatives risked lives for and too many others died for.

From the United Nations declaration of 1948, I quote article 2: "Everyone is entitled to all the rights and freedoms set forth in this declaration"—and I add emphasis to this section—"without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

I quote from article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination."

It becomes clearer that Canada, on the issue of how human rights are to be considered, supports this premise, because our Charter of Rights and Freedoms of 1982 says, and I quote from the part pertaining to equality rights, section 15(1), "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law"—and I emphasize—"without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

So why do I charge this very committee with practising hypocrisy? As I expressed in writing to the clerk of this committee, this process is supposed to be in advancement of the equivalency of citizens of this province. But the committee itself apparently cannot get the simplest notion of this concept right. It sets deadlines for citizens outside of the geographic area of Toronto before it publicizes the restrictions that will apply to Toronto residents. There was no setting of a schedule for all hearings and soliciting participation for all citizens on an equal basis. Regardless of intent, the appearance becomes that there is some reason to favour the greater Toronto area, so citizens of other geographies become second class. Deadlines are set for other citizens with not even a blink of an eyelash as to what this implies under the laws and promises quoted above.

Then, in continuing promotion of this hypocrisy, the clerk's communication confirming my time slot also informs me that I will be restricted to 20 minutes. This is because I am an individual. But the same communication informs me that organizations will be allotted 30 minutes. I am a citizen of Canada. The highest laws of this nation forbid discrimination against me and promise equivalency under the law. Therefore, I will not tolerate denigration of my rights simply because I am viewed by this hypocritical committee of justice as being different in

status simply because I am not an organization. If I exceed the 20 minutes, I will take the 30 minutes given others by this committee.

The document in its whole will take personal experience and observations to warn this committee that it and its members need to soberly reflect on their collective and individual duties after today, and it makes a more full assessment of the added serious violations of human rights that appear in this very room, in addition to these preliminary offensive acts of discrimination.

1720

I took the liberty of using the experience with the Internet I have gained over the last 3.5 years. In irony, I found that three of your members are lawyers by profession. Even more ironically, they appear as members from each of the three major political parties represented in this room. I'm not going to read out their names publicly here, but I do warn that their names are included in this document and that this document has been sent to the commissioners of the RCMP and OPP for reasons that will become clearer as this presentation continues. If the protection of human rights is indeed the purpose of this Bill 107 session, then I suggest that you all take the time to more carefully consider why this is an issue.

I'm going to suggest some prerequisite reference materials for this committee; first, a book. I have not had the time and resources to dig out the actual title and author, but I do make reference to the date and time I heard this book referenced on a CBC Radio program. The reference can be found at a personal column website that I have created and which this document gives linkage to. If I got the title of the book right, it is called *Entering the Dark Ages*. I was intrigued by the interviewer's reference to the elderly female author's prognosis that so-called professionals in our modern society fail their public duty miserably. I am going to use my personal observations to make confirmation that this author's assessment is most correct and why the conduct of the legal profession, including those in this room and on this panel, is not only hypocrisy but irresponsible in this issue of human rights in my country, something this committee claims to be so concerned about.

Second, I am going to insist that if this committee is indeed servant to the goals of human rights, each and every committee member, but especially those of the legal profession and those in the government's service, watch the powerful movie *The Piano*. Based on fact, this movie tells the story of a famous Polish Jew concert pianist. I suggest that you review the scene where a Nazi sympathizer appears in the pianist's Warsaw ghetto home. A plump man tells the starving family to accept a pittance for the piano because they should know that money for food should be more important to them. The instrument of the pianist's source of economy is removed. Then, shift to the scene where the Warsaw ghetto is being emptied to send its citizenry to gas chambers and listen to the angst that arises from a frail pianist whose brother insists in that scene that the thousands in the square being held for shipment in cattle

cars should risk rushing the few armed guards in defence of their freedom. This movie, or its precursor, Schindler's List, gave perspective to what happened during World War II. People in government institutions and in the service of government apparently forget that scenes like this led to the written declarations on human rights I have referenced above.

These films should not be reflected upon in debate of the accuracy of the words used and what actually transpired but in sober reflection of what happened and what the promise "never again" set in these declarations and charters really means. We need to remember that first partisans were empowered, then they declared that those people who paid to promote their ideals were the favoured. First, they acted to ensure that those who did not pay into their political party were excluded from consideration by the government. Then even the poor were declared persons of lower status. Those outside the circle of partisans were assigned reduced rights until they had no rights at all.

So I ask of this committee, by declaring me less important than organizations, what makes your actions any less abhorrent than those of partisan Nazis? More cynically, what of the duty of professionals and our elected? Ask yourselves this question: At what stage do we collectively have a responsibility to demand protection of the rights of the individual set in our laws? The answer is clear in our history: Our responsibility lies in the first revelation of deteriorating rights, not when bodies finally appear on streets or on television screens.

I am left wondering if any members of this committee have ever read the UN declaration or the Canadian Charter of Rights and Freedoms. I suggest that this committee collectively start to think about article 21 of the UN declaration:

"(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

"(2) Everyone has the right of equal access to public service in his country."

In 2002, I encountered a situation where article 21, part 2, was blatantly violated by the partisans in power at that time. In time, I was forced to read the law extensively. I quote from the UN declaration of 1948, article 10:

"Everyone is entitled in full equality to a fair and public hearing"—and, I add emphasis—"by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

In the course of three years since 2002, I discovered the blatant self-promotion of our so-called legal professionals. I have summarized the circumstances with more details in an appendix to this submission provided to this committee as an electronic floppy diskette.

Suffice it to say here in this summary presentation that I first encountered lawyers who, paid to be partisans, refused to deal with my petitions for justice and then appeared in court on behalf of partisans and big corporations who had paid into the same partisan groups.

Then I discovered that the judges I appeared before had paid astutely into the very partisan groups I complained about. These judges, some on the bench less than 1.5 years, then sat in judgment of my complaints. And every time I received orders of the court, I discovered more and more and viler and viler violations of the principles and promises of justice in Canada, which are justice regardless of status and an impartial and independent justice system. Indeed, appendix A of my submission reveals the discoveries of these base violations of charter and international law to the level of the Supreme Court of Canada.

I suggest that you all review the Canadian Criminal Code, especially those sections that make it a Criminal Code violation to breach any act of Parliament and which make this duty especially a duty of people given position in any government institution. Then tell me why the highest acts of Parliament and promises to all Canadian citizens are repeatedly ignored by those of position, including members of this committee. Review those sections of that law which forbid any individual using their elected or promoted position in any government institution to promote and protect their own position or personal economy. Then answer me this question: If this were a committee relevant to determining what new fee structures would be applied to Canada's Great Lakes shipping channels and former Prime Minister Paul Martin appeared as an elected official, would you remain silent in the obvious violations of Criminal Code sections forbidding our elected officials from exercising influence to protect their position or to promote their own economy? Start to think about your collective duty here.

After I applied to appear before this hearing on July 27, 2006, the local news stations had an OPP officer urging cyclists to watch how they rode Canada's main highway. The report noted that a cyclist crossing Canada to raise awareness about the lack of support for legal aid had been struck and killed by a vehicle outside Sault Ste. Marie. Answer me this: If the principles set in higher laws require justice regardless of status of any nature, why is it that elected lawyers repeatedly appear to influence laws and committees like this as the poor are denied justice and access to our courts? Why do I have to pay \$40 to fight a small-claims-court claim that comes from a big corporation that I have already tried to file and been told by courts to pay \$157 when I don't have the money to even subpoena people? Answer me that.

1730

Read the laws I reference at the end of this document. Every one of them suggests or references laws that declare that the primary principle of any law is justice, as seen by normal citizens to be just. The law is not for legal experts; the law is for the citizens of this nation, and it is on the basis of the equivalency of the individual set under higher laws.

But now your committee appears with so-called legal professionals sitting in consideration of the issues of justice and supposedly human rights, and the committee, despite the presence of these "experts," cannot get the

basic considerations of discrimination of any kind right. Geography merits greater preparation time for Toronto than Ontario's lowly hinterlands. Organizations bear greater distinction than the individual citizens. "Policy is the prerogative of the government" is a phrase I have heard too many utter, pretending to serve democracy or to be instruments of justice. Too many ignore that this was a theory promoted by 1939 which too many Canadians died for once again to stop. Policy is not the prerogative of government when other laws—higher laws—become ignored.

You collectively and with much hypocrisy propose a law that is 20 pages long. Your proposal does not simply state that the province of Ontario accepts the extreme importance of Canada's Charter of Rights and Freedoms nor does it acknowledge that the higher acts of Parliament accepted the 1948 UN declaration that bears equal relevance; your proposal does not simply state that the government of Ontario wants to set up a tribunal to accept and review complaints of violations of these important acts. Instead, you collectively promote 20 pages of rules that most vilely state that a supposed tribunal for human rights will be allowed to determine and set fees that will then determine who will or who will not be granted hearings before a supposed tribunal set up for the promotion and protection of human rights. Who appears at these hearings demanding these fees? At least three lawyers who, if they were shipping magnates appearing in front of a committee about the shipping industry, would be vilified and attacked and humiliated.

Moral and legal duty is not defined by majority positions. If it were, we would accept the pronouncement by Hezbollah that Jews are inconsequential and we would accept the majority premise of 1939, even reflected sadly in Canada's rejection of boatloads of Jews fleeing Germany, that parts of our society can be defined as insignificant simply because they are not of the same race, religion, partisan association or economic status.

UN declarations and constitutional charters were created in recognition that a majority opinion does not always guarantee moral conduct. These highest laws were created to protect every citizen from those who corrupt the base promise of equivalency of person. "Policy is the prerogative of the government" is neither the founding principle in Canada's laws nor is it the principle protecting the standards of democracy.

"Professionals"? "Professional associations"? "Self-regulating professionals"? I suggest that you all carefully review the ramifications I watched develop in my 35 years of involvement in the forestry profession, as I summarize in appendix B of the information provided. Again, in brief, there would have been no need for the extensive mill closures being experienced in my part of this country in 2006 if the warnings of real professionals had been listened to 35 years ago.

It would serve this committee best to soberly reflect on why we pause every November 11. The record shows troops leading German citizens through concentration camps adjacent to their towns. They were forced to view

piles of rotting bodies because they claimed that they did not know. The precedent set by the Nuremberg trials after 1945 became that judges, politicians and leaders of the highest offices be accountable when they take advantage of their position to deny any citizen basic human rights.

Indeed, it took legal action by Canadian Jews to finally establish that property removed by those who followed laws first created by partisans, while other laws of human rights and just governance were ignored, was illegally removed and had to be returned to those denied these basic considerations. The piano had to be returned to the pianist if justice were to be served, but Jews had to wait 30 years before they finally achieved justice.

The appendices of my presentation reveal the dark side of growing Canadian injustices in a system claiming to be for justice and basic human rights. I urge you to consider your duty here and review those appendices.

Thank you for your time.

The Chair: Thank you. There's obviously no time for questions and comments. So thank you very much for your presentation.

Mr. Kormos: By the way, Mr. MacAlpine, you missed one.

Mr. MacAlpine: Well, hopefully, they'll recognize they're doing it.

BERNADETTE POULIN

The Chair: We have one more presenter for a few minutes. It's Bernadette Poulin.

Good afternoon, Ms. Poulin. You have 10 minutes.

Ms. Bernadette Poulin: Am I loud enough? Okay. I'm here to talk about myself and my situation. I've been really looking for and searching for help since 2001. I had a car accident in 2001. Since then, it's been an upward battle to get any kind of help. I've been denied help in rehab when they applied for me from the Brain Injury Services of Northern Ontario, but the reason for that is that I had a DAC program in Sault Ste. Marie. So out of that, without my MRI being sent there with my other forms, they made the conclusion that I was denied my rehab.

I haven't got any disability since then too, which I have applied for. The first time I applied would have been in 2003, when we really had it filled out and done. It was supposed to be sent out, but my worker forgot about it in my file, so it was there and the time period ran out. These things happen. It finally went in this year, in March. So now it's in there, and hopefully—they said they wouldn't be able to look at it until November.

1740

So I just really need help with a lot of things. I believe I've had a head injury, which has given me great difficulty in my life and in the daily functions of life. I've had suspensions from OW since I don't know when. I think this is the first time, last month, when I finally got my cheque on time, thanks to my addiction worker, Carrie. But things like this and other things are piling up

and piling up, and I'm just not able to do the things I used to do before the accident, as far as catching up with all these things and dealing with the everyday issues of life, dealing with my 15-year-old daughter, who is so badly affected by this, and so is my 20-year-old. He's depressed. It's just like we're falling apart over here, and I've been going round and round all these years and asking for help and knocking on doors and all this stuff.

I have headaches constantly, daily now. I've been having headaches for a long time, and nosebleeds. I've had an MRI done, but that's very questionable, because when my worker and I went to see the neurologist, what I saw in there was a ball that round inside my head, and I guess I had a concussion with that, according to the doctor. But none of that is in the report. I still haven't got the help I need, and my headaches are getting worse, and my neck. I had injuries in this accident, with nobody admitting to them on paper or anything like this. I'm the one who's suffering here. I'm the one who has to deal with this thing every day. If I can get some kind of help, it would be much appreciated.

They also diagnosed me with cirrhosis of the liver, but I haven't drank for five years now, since shortly after the accident. I'm wondering why my liver would still be deteriorating when I stopped drinking. But my big question was, would 500 iron shots do it? I don't know. That's what I've gotten in a span of a year and a half. I got 500 iron shots, and I don't know if that affected my liver in any way. It's still deteriorating to this day, and I'm still not drinking.

My eyes have been affected. I went to see a specialist, and he asked me a question. He said, "Did you ever get a blow on the head?" I said, "No, but I did get into a car accident, and I believe that hurt my head." He said, "Well, you have scarring in the back of your left eye. That indicates that you got a really good blow on your head." All these things point to that.

After I was in the accident, in the ambulance, the first time I came to, the ambulance driver was driving around—I mean, like a time capsule, floating around. I went in and out, and I came to again at the hospital, same thing: The nurse was floating around the room. Everything points to that. When I finally got my MRI out of that hospital—they sent me to another DAC program last month in Toronto, and when I got there it was supposed to be an hour to an hour and a half meeting. I got there and 15 minutes later he says, "Okay, that's it." I said, "Wait a minute. Didn't they send my MRI?" He said, "No." I said, "Okay, it happened again. Well, here, have a look at this one." I had gotten it from the hospital. I said, "I want you to show me what you guys are telling me, that I don't have anything to worry about, that I have a cyst in my head. So I want to see it." So he showed it to me. "It's right here," he said. "It's very hard to see." Then, when I said, "Okay, now show me that round ball that I saw," he couldn't find it.

So I don't know what's going on. I need help to uncover some of these things so that my family and I can leave this behind and move forward and find healing for

our lives, because we're falling apart. We need to get this straightened out and we need to move on.

I had a lot of things written down here that I wanted to say, like how I feel angry, stressed out, anxious. I was called names. I was called the F-word and the B-word by the insurance company. They said to me, "Why don't you leave it well enough alone, you—blah, blah, blah?" Why do I get spoken to like that by a representative of some office? I don't need that either. That wasn't my job; that was my lawyer's. I need help.

The Chair: Thank you very much. We're really sad to hear your story. Just as a suggestion, have you contacted your MPP with respect to this?

Ms. Poulin: I have. They said their hands are tied, and I don't know what that means.

The Chair: Maybe you can let us know who your MPP is and we can ask them to give you a call. Do any of the committee members have any suggestions?

Mrs. Elliott: The other thing that you might want to consider is working through the brain injury association, if there is a local chapter to help you, because I understand that it's difficult for you to put things together. The other thing is, are you still seeing a physician for your headaches? It sounds like that's still a concern for you.

Ms. Poulin: My biggest problem has been getting a regular family doctor. But I have since been seeing a doctor for about six months now.

Mrs. Elliott: Perhaps they can help you work with the association and maybe they can help you with some advocacy to help you pull things together. They've certainly been very helpful in my area. I think they would be a good place for you to start, anyway.

The Chair: Any other comments or suggestions?

Mr. Kormos: Who's your MPP?

Ms. Poulin: I phoned Mike Gravelle's office.

Mr. Kormos: You spoke with his staff, right?

Ms. Poulin: Yes, I spoke with his staff twice, once a few years back and once a few weeks ago.

Mr. Kormos: The staff are very busy, right? Because they are in all of our offices. You didn't get a chance to speak to Mike Gravelle, did you?

Ms. Poulin: No, I didn't. I really wanted to. He's the person I really wanted to get a hold of.

Mr. Kormos: Colleagues, maybe if somebody would take down a contact number, we could ask Mike Gravelle to give her a call.

The Chair: Actually, his office is right next door to mine. I'll call, and we'll get Ms. Poulin's information.

Mr. Kormos: Vic Dhillon is the Chair of the committee. He's a colleague of Mike Gravelle's in the Liberal caucus. I suppose the commitment we're making to you is that Mike Gravelle or somebody from his office will call you. Nobody knows how much help he can give you, but you want him to try, right?

Ms. Poulin: Yes.

Mr. Kormos: All you want is for somebody to try, huh?

Ms. Poulin: Yes.

Mr. Kormos: And that will happen within how many days?

The Chair: We'll pass on the message.

Mr. Kormos: No, we've got to give this woman a time frame.

The Chair: We don't know what his schedule is.

Mr. Kormos: That'll happen within seven days.

Ms. Poulin: Okay.

Mr. Kormos: If it doesn't happen within seven days, get a hold of the clerk of the committee.

The Chair: Thank you very much. Thank you, members, staff and all the other people who assisted.

Mr. Berardinetti: Chair, I just have a quick request as we wind down here. I spoke to Mr. Fenson briefly—

and I wonder if I need to make this in the form of a motion or just a request, that he look at some of the other provinces to see what they're doing with their human rights tribunals or commissions and let us know.

The Chair: Have you noted that? Mr. Fenson has noted that, and he'll get back to us.

Mr. Kormos: Specifically Quebec, which has a dual—

Mr. Berardinetti: And British Columbia, because they did make a change to theirs as well, which was mentioned earlier today.

The Chair: Thank you very much. This committee meeting is adjourned.

The committee adjourned at 1745.

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Standing committee on justice policy

Access to Justice Act, 2006

Comité permanent de la justice

Loi de 2006 sur l'accès à la justice



Chair: Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 5 September 2006

Mardi 5 septembre 2006

*The committee met at 0902 in room 151.*ACCESS TO JUSTICE ACT, 2006
LOI DE 2006
SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning. Welcome to the meeting of the standing committee on justice policy. Today we are here to consider Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

SUBCOMMITTEE REPORT

The Chair: Our first order of business before we commence the public hearings today is a motion for the adoption of the subcommittee report of July 25, 2006. I'd ask for someone to read the report into the record and move its adoption. Mr. McMeekin.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Your subcommittee considered, on Tuesday, July 25, 2006, the method of proceeding on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 14 on September 5, 6, 7, 11, 12, 13 and 14, 2006.

(2) That all requests to appear before the committee received by the deadline of April 21, 2006, be scheduled during the public hearings in September.

(3) That organizations be given 30 minutes and individuals 20 minutes in which to speak.

(4) That those that applied after the deadline of April 21 be scheduled in order of first come, first served if a cancellation occurs among those who applied by the deadline.

(5) That clause-by-clause consideration of Bill 14 be held on September 20, 21 and 22, 2006.

(6) That the tentative date that amendments to Bill 14 should be received by the clerk of the committee be

12:00 noon on Monday, September 18, 2006, subject to revision by the committee.

(7) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(8) That requests for reimbursement of travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(9) That the committee meet in room 151, if possible, for public hearings and clause-by-clause consideration of Bill 14 depending on availability of the room.

(10) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

I will move that report, Mr. Chair.

The Chair: Thank you, Mr. McMeekin. Any debate?

Mr. Peter Kormos (Niagara Centre): Perhaps we could be updated on the status of applicants for participation in these hearings. I presume there's an overflow list, if that's not an unfair way to call it. What's the size of it? We haven't had a subcommittee meeting around this for over a month now.

The Clerk Pro Tem (Mr. Trevor Day): You'll have to forgive me. I'm stepping in for Anne Stokes. To the best of my knowledge, I believe we are about 30 requests deep on the overflow. There have been eight people from the original list who have not gotten back to us, so those spots are being held, and we have moved to the overflow list to attempt to get people in. So I'd say, again, I believe we're about 10 or 12 people into the overflow list at this point, where calls have been put out, requests have been made for people to come in. We are holding spots, again from that original group that made them before the deadline for the next week and the following. But for now, I believe it's in the neighbourhood of approximately 30 in the overflow area.

Mr. Kormos: Thank you. I'm not going to belabour the point now, but perhaps we could meet as a subcommittee, Chair, at some point before the end of next week, to try to deal with that and see if there's a way that we can accommodate as many people as possible. It's just a shame to have those people denied an opportunity.

The Chair: Okay. Any further debate? Seeing none, all those in favour? Opposed? That motion is carried.

CANADIAN INSTITUTE OF ACTUARIES

The Chair: The first presentation this morning is from the Canadian Institute of Actuaries. Good morning.

Mr. Jim Christie: Good morning.

The Chair: If I can get you to state your name for Hansard, and you may begin. You have 30 minutes.

Mr. Christie: My name is Jim Christie. I am a member of the board of directors of the Canadian Institute of Actuaries.

I'd first like to begin by thanking you for giving me the opportunity to present the concerns the Canadian Institute of Actuaries has with respect to Bill 14. I'd like to begin by first of all giving you a little background on what actuaries do in Canada, how they're regulated, and then explain why we are concerned that requiring independent regulation of actuaries by the Law Society of Upper Canada is unnecessary and probably illogical.

To begin with, actuaries are professionals who analyze uncertain future risks and assess the financial consequences of that risk. Actuaries uniquely combine probability, statistics, finance and risk theory to do this. They study uncertain events associated with life insurance, property and casualty insurance, annuities, pension or other employee benefit plans, and are often involved in designing ways to decrease the impact of adverse events before they occur.

One significant activity of actuaries in Canada is serving insurance companies—their policyholders, shareholders and management of the companies. They also serve pension plans—their sponsors, active participants and retired members. They do this by filling the roles reserved for actuaries under federal or provincial statute. I'll describe those activities in a little more detail in a minute.

One particular distinctive feature of the actuarial profession in Canada is that it is federally incorporated under an act of the federal Parliament in 1965 to create the Canadian Institute of Actuaries. That act required the institute to "establish, promote and maintain high" levels "of competence and conduct within the actuarial profession."

0910

Normally, professions in Canada are regulated by the provinces, but no province has chosen to regulate actuaries and therefore all actuaries in Canada fall under the review of the Canadian Institute of Actuaries. Because we aren't a regulated profession in the provincial context, anyone can call themselves an actuary and attempt to provide actuarial advice.

However, only those who are members of the Canadian Institute of Actuaries and meet the criteria to call themselves a fellow can actually sign opinions under any of the federal or provincial statutes. So we're here representing the fellows of the Canadian Institute of Actuaries, of which there are 2,500, approximately, in Canada right now.

The Canadian Institute of Actuaries, since its inception in 1965, has adopted guiding principles and bylaws and

developed standards of practice in order to ensure that fellows provide appropriate actuarial advice to the public. Our first guiding principle says, "The institute holds the duty of the profession to the public above the needs of the profession and its members." We have a formal discipline process to address any complaints received about the professional work of fellows and/or those under their direction. Penalties under the discipline process can include a fine, a reprimand or expulsion from the Canadian Institute of Actuaries.

Actuaries typically work in the following roles in Canada: They work in insurance companies. Most insurance companies in Canada are regulated by the Office of the Superintendent of Financial Institutions. That's a federal act. The Insurance Companies Act, which governs all insurance companies regulated by OSFI, requires the board of directors or the chief agent to appoint an actuary. That actuary is required to value the actuarial and other policy liabilities of the company; report on the financial position of the company and the expected future financial condition of the company; and report on any matter to the regulator if the actuary believes the matter will have a material adverse effect on the company, and if suitable action is not being taken.

The Insurance Companies Act specifies that the actuary must be a fellow of the Canadian Institute of Actuaries.

Actuaries also work in pension plans in Canada and are subject to the pension standards legislation of each of the Canadian provinces or, in a few cases, under federal legislation. In Ontario, for example, requirements are set out under the Ontario Pension Benefits Act and regulations. Pension plans are also subject to the requirements of the Income Tax Act. The role of the pension actuary in Canada is primarily one of recommending funding levels for a pension plan within upper and lower bounds established by pension and tax legislation. The federal and provincial legislations require the appointment of an actuary and specifies that the actuary must be a fellow of the Canadian Institute of Actuaries.

Finally, actuaries work in government. In Canada, with the federal regulators, they have a number of actuaries on staff. The provincial regulators in Ontario and Quebec also have actuaries. In addition to the regulators, all of the provinces from time to time hire consulting actuaries. Actuaries also provide other services to government, including the Canada Pension Plan.

The Canadian Institute of Actuaries has some concerns about Bill 14. In our view, the legislative net contained in Bill 14 is just too broad. Our review of Bill 14 suggests that many of the business advisory and drafting roles that actuaries provide on a regular basis could be considered activities that come within the scope of Bill 14. It may not have been the intention of the government to regulate actuaries under this licensing regime, but it certainly appears to us that we're going to be swept up in that net.

Our real concerns are with the definition of legal services. Again, we just believe it's too broad. Actuaries, by

their training, are well-qualified—eminently qualified—to deal with many of the issues around pension plans or insurance law, and yet this act would in fact probably require them to be considered giving legal advice in these particular areas.

When an actuary provides an insurance company with a valuation report on their actuarial and policy liabilities, it might very well fall within a definition of completing a document that affects the legal interests, rights or responsibilities of a person. When we report to management on the concerns that we might have about what's going on, that might be considered giving advice to person with respect to legal interests.

Addressing valid policy concerns about the services provided by unregulated paralegals should not result in the inadvertent regulation of FCIAs, of fellows, who are already subject to a regime that encompasses rules of professional conduct, standards of practice and a disciplinary process. And much of their work is already subject to federal and provincial laws or regulations.

We're concerned that the planned solution within Bill 14 to the broad definition of "legal services" by exemption through Law Society of Upper Canada bylaws is insufficient. Such a procedure leaves the legality of many common activities of current and future fellows at the whim of the law society.

Our recommendation is that Bill 14 be specifically amended to exempt fellows of the Canadian Institute of Actuaries, as well as those working directly under their supervision, from its provisions or definition of legal services. We believe the best way to do this is to revise the definition of "legal services" to exclude fellows by adding the words "other than by actuaries who are fellows of the Canadian Institute of Actuaries" to subsection 1(5).

Those are my prepared remarks, gentlemen.

The Chair: Thank you very much. We have about seven minutes for each side. We'll begin with the official opposition. Mr. Chudleigh.

Mr. Ted Chudleigh (Halton): Thank you for coming to the hearing and sharing your thoughts with us.

The definition of legal services: Was your association consulted prior to this legislation being brought in? Was there any consultation that took place with the government and the drafters?

Mr. Christie: We were aware of the legislation and did provide some comment to the drafters. I'm not sure whether that was done before the legislation was introduced or subsequent to its tabling.

Mr. Chudleigh: But you had expressed these concerns prior to the legislation being drafted?

Mr. Christie: We wrote to the Premier in February 2006 expressing our concerns and were on the original list of organizations to appear before this committee.

Mr. Chudleigh: So your concerns were pretty much ignored on the legislation that was drafted?

Mr. Christie: I believe so.

Mr. Chudleigh: The definition of legal services is going to certainly enhance the times in which the legal

profession is going to be called in for advice in these matters. Would you say that's very accurate?

Mr. Christie: Yes. One of our concerns is that we're always striving to keep the administrative costs of pensions as low as possible. Many of these plans are quite small and don't have a lot of margin for administrative expenses, so anything that adds to those costs makes pensions that much more difficult to administer.

Mr. Chudleigh: Yes, you get to my point. This is going to increase costs. Lawyers are going to be involved in every aspect of anything that might be remotely construed as giving legal advice or giving advice almost of any kind which would have some kind of legal ramification to it. So it's certainly going to increase costs, to the benefit of the law society and the legal profession.

Mr. Christie: Possibly, certainly. We would hope the law society would grant an exemption, if the bill passes as it sits right now, for actuaries offering advice within their purview, but we don't know that that's going to happen. We don't believe that's the appropriate way to do it.

Mr. Chudleigh: If the law society did that, they would be taking away opportunities from their membership. Do you think that would be something that you can count on the law society to do?

Mr. Christie: I'm not sure how the law society would react, sir.

0920

Mr. Chudleigh: We all have our suspicions.

Under the disciplinary regulations that the actuarial institute does, how many disciplinary hearings would there be in a given year, for instance, that the institute might conduct?

Mr. Christie: It varies from year to year, but it has been in the order of three to five a year.

Mr. Chudleigh: And how many fellows would there be in Canada?

Mr. Christie: There are 2,700.

Mr. Chudleigh: So discipline is really a very minor issue?

Mr. Christie: It's a minor issue in that most actuaries perform professionally; it's a major issue in that an extensive part of the cost of running the Canadian Institute of Actuaries is the discipline process.

Mr. Chudleigh: And you have insurance for these kinds of things?

Mr. Christie: Not as such. The individual actuaries are responsible for their own actions, not the Canadian Institute of Actuaries. The Canadian Institute of Actuaries has insurance to protect its directors and its officers for actions they might commit or undertake in that capacity. At the present time, the Canadian Institute of Actuaries is introducing an insurance program for its members who wish to avail themselves of it. Many of the actuaries don't actually practise in the public; they work for a single employer.

Mr. Chudleigh: So insurance wouldn't be necessary in that case?

Mr. Christie: It's covered under their employer's insurance.

Mr. Chudleigh: Good. Thank you very much.

The Chair: Mr. Kormos?

Mr. Kormos: I'm almost jealous that Mr. Chudleigh was the first to advance the conspiracy theory today and generate a climate of paranoia.

Mr. Chudleigh: Sorry.

Mr. Kormos: But notwithstanding the law society's ability to defend itself, surely doing actuarial work is not within the goals or ambitions of most lawyers I know, never mind within the realm of expertise. I suspect that the problem here is one of negligent drafting and there's going to be a whole lot of focus on this. I suspect the next participants this morning are going to be addressing it as well. So thank you very much for adding the Canadian Institute of Actuaries to the list of many, many organizations that have concerns about the "provision of legal services" definition.

The Chair: To the government side. Mr. Zimmer.

Mr. David Zimmer (Willowdale): Thank you very much for your submission.

Mr. Christie: Thank you.

The Chair: Thank you, sir.

ST. STEPHEN'S COMMUNITY MEDIATION SERVICE

ADR INSTITUTE OF ONTARIO

The Chair: The next presentation is from St. Stephen's Community House and the ADR Institute of Ontario. Good morning. If you could identify yourself for Hansard, and you may begin any time. You have 30 minutes.

Mr. Peter Bruer: Thank you. My name is Peter Bruer. I'm the manager of the conflict resolution service at St. Stephen's Community House. Thanks for the opportunity to speak to the committee on an issue of some importance to us.

I should begin by saying that I'm here on behalf of about a dozen other community mediation services across the province of Ontario. You have my submission in front of you. I should add that the Oakville dispute mediators did speak to me last week and have officially added their name as people on whose behalf I'm speaking. I think, with confidence, though, I can speak for all community mediators across the province. I've written to the minister about this issue in the past, and all of the services, from Sioux Lookout to Windsor and through to London and out east, have identified with the same issues.

We're asking you to alter the Access to Justice Act so that its provisions do not apply to mediators, as they now clearly do. I'll also argue that the present plan, as we understand it, to ask the Law Society of Upper Canada to exempt mediators from the regulations of the bill is not a good idea.

Let me begin, though, by saying a few words about community mediation and the kind of practice that the services I represent use. Community mediation services recruit volunteers broadly representative of the communities they serve and train them to intervene in neighbourhood and interpersonal conflicts in people's everyday lives: noise disputes, parking problems and so on, minor criminal matters referred by the courts or diverted from the courts, anywhere people need an effective working relationship with each other—landlord-tenant disputes, problems within families, although not family mediation. Our goal is to mend the relationships between these people in conflict, to restore their respect and trust for each other. We believe that this ought to be the normal state of our relations with each other.

The first service started in Canada in 1982 in Kitchener. The service I'm with was founded in 1985, over 20 years ago. There are 15 active services in the province, as I've pointed out. We've recently established a standard for training for volunteers and community mediation in Ontario and we're about to set up a province-wide organization to represent our interests and coordinate our activities. Incidentally, there are hundreds of community mediation services around the world, particularly in the English-speaking world: in the United States, in the UK, in New Zealand and Australia. It's a well-established profession. Hundreds of mediators have been practising this sort of conflict resolution for several decades, so let me continue from that position, then.

In brief, we're here to ask you to change the legislation to exempt mediators from its provisions. Mediators, at least community mediators, do not provide legal services as defined by the legislation—I'll explain that further in a moment—nor do we feel it's wise to leave the legislation as it's now written and expect the law society to pass bylaws exempting mediators.

There isn't really any reason why mediation as we practise it should be placed under the jurisdiction of the law society. I probably don't need to belabour the difficulty with the wording "legal services"; it clearly can be seen to apply to the kinds of things that we do: providing legal services and documents that might affect a person's interests or rights in a real or personal property and so on. Community mediation commonly results in written agreements or memoranda outlining an understanding that the parties have reached. For example, community mediation might result in an understanding about how two neighbours agree they will share access to garages at the back of their properties through a common drive or such similar things. The language in the section could be interpreted to say that this is providing legal services.

Community mediation takes an approach fundamentally different from the law. They are carried out in non-legal circumstances; community mediators take great pains to distinguish our services from legal services. As I said, the objective is not the resolution of the conflict really but the mending of the relationship. A community mediator doesn't have any opinion or judgment of the merits or the facts of the effects of the situation being

resolved as judges do, nor does a mediator give any advice to the parties involved, as paralegals or lawyers might do, except in regard to the process that we facilitate, of course. In other words, community mediators are purely facilitators of the process, not evaluators, not advisers. They act for all parties in a situation, and this distinguishes mediators from other sorts of practitioners providing legal services. The mediators never act for one party, but always all parties in a situation.

In these respects, then, community mediation in particular is quite unlike the law or even arbitration. Indeed, it rests on entirely different principles. It doesn't take place within the confines of the legal system, even where court-connected referrals are made to community mediation services. For example, out of several courts in Toronto, the practice is clearly identified as "diversion." It is no more a provision of legal services than anger management courses or many of the other diversion programs that exist in the courts. The process is correctly identified as something else: restorative justice, not community mediation.

Let me add a different sort of reason. That's a very practical concern on our part: that we are not practising law; we're not providing legal services. In fact, the whole point of community mediation is to distinguish it from providing legal services. We've been working hard for 20 years to do just that. There's a different reason, and that is that more and more mediation is being promoted as an alternative to litigation in the legal system for a number of reasons: cost, timeliness, accessibility, cultural appropriateness and so on. The courts, the law schools and other legislation like the Youth Justice Act are part of this trend toward diversifying how conflict is resolved in our society. The Access to Justice Act in its present form, treating mediation like another form of legal service, is essentially a step backward in this respect. It's a denial of the whole direction in policy that this government and others have taken that sets up mediation and alternative dispute resolution as alternatives to the legal system, not part of the legal system. I think all of this speaks to the need to change the Access to Justice Act to ensure that mediators are not covered by its provisions. For these reasons, we're asking that mediators be exempted.

If this necessitates your defining what a paralegal is more clearly, and we acknowledge it may be necessary in doing that to define what a mediator is, fine. Let's have that discussion. The distinctions I outlined just now might be useful. Existing organizations in the field would be happy to have that kind of discussion, I think.

On behalf of St. Stephen's Community House and mediators across the province, thank you. I look forward to the results of the hearings, and I'll happily entertain some questions and then turn things over to my colleague.

0930

The Chair: Maybe we can have questions at the end. If you'd like to make your presentation.

Dr. Barbara Landau: My name is Dr. Barbara Landau, and I'm a registered psychologist and a lawyer. I

now restrict my practice to mediation and other forms of dispute resolution.

I think that, to follow up on what Peter has said, I'm going to start with my conclusion, because I think it's relevant to what you've heard, and that is that I understand the reasonableness of prosecuting unscrupulous individuals who deceive the public by misrepresenting their credentials and offering services fraudulently. However, many eminent members of the board and the judiciary have responded to the public's desire for more efficient, timely and cost-effective multi-door approaches to legal disputes. They've encouraged the development of non-adversarial or alternative dispute resolution, such as that offered by mediators, arbitrators, med-arb practitioners, parenting coordinators and community mediators, who come from many different backgrounds and are selected voluntarily by clients.

It's our position that members of recognized ADR professional organizations or those trained as mediators should either be exempt or not included in the scope of the legislation, because the legislation is defining the practice of law, and we are not practising law.

I'll go back to the beginning: I'm here on behalf of the ADR Institute of Ontario, and we have a number of serious concerns that I think you're going to hear echoed over and over again in these hearings because in our case they impact on mediators, parenting coordinators and arbitrators.

The practice of mediation, parenting coordination and arbitration are not the practice of law, and many of our members are not lawyers. When they are lawyers, as I am a lawyer—I'm not practising law when I'm practising mediation, but this legislation catches everybody in its very large net. So what we're seeking is either to be exempted or, because this is not the practice of law, it's not caught within the scope of the Access to Justice Act.

The law society, in its task force report in May 2004, recommended that mediators and other ADR practitioners be exempt from the act. It didn't end up in its recommendations to the government that appeared in September 2004, but the society made it clear in meetings that we had that they had no intention of regulating mediators or ADR professionals. We therefore urge you to recognize that mediators and other ADR practitioners are not practising law and should not be caught by this legislation.

We have a number of premises and a number of concerns. So we're starting out with the understanding that the act anticipates that certain practitioners, like paralegals and law clerks who are actually carrying out legal services, need to be regulated in some way and that there is an intention to provide bylaws, that the law society will provide bylaws whereby these people can seek licences to provide their services and that those services will be limited in scope and there'll be some clear boundaries.

As we've said before, mediation, med-arb, arbitration, parenting coordination and other forms of dispute resolution should not be included, because they're not provid-

ing legal services. We're concerned that there be no ambiguity in the legislation so that we're not caught by its terminology, which at the present time is extremely broad.

We understand that the objective in part is to protect the public, and I've already indicated that if people are unscrupulous or misleading the public in terms of their credentials, there should be a mechanism for disciplining those people. We assume that the intention was not to prevent other professionals from responsibly offering advice, assistance and conflict resolution services. In fact, other professional groups such as psychology and social work do regulate mediators. When we offer mediation services as psychologists or social workers, we are under the regulation of those professional bodies. They are not seeing us as practising law; they are seeing us as practising a helping profession.

We further assume that the objective is not to unduly restrict informed consumers from selecting professionals other than members of the law society for information and advice. I think you're going to hear from many professional groups who feel that this legislation just goes too far; it's just too broad.

We assume that the act entitled Access to Justice Act was really intended, as part of its intention, to provide the public with options for responsible dispute resolution that are non-adversarial, efficient and cost-effective. Those services may be provided by a wide range of professionals or trained individuals with expertise other than law.

Our number one concern is that the bill unduly restricts the reasonable practices of many professionals. The act, as currently drafted, would limit access to justice rather than improve services to the public. As psychologists, we ran into the very same dilemma because the practice of psychology wanted to define itself so broadly that anybody offering counselling services would have been caught in its net. We weren't permitted to do that because people could choose. They could go to a clergyperson, their mother, a tarot card reader. They could make choices based on, hopefully, information and voluntariness. But we were not permitted to define ourselves so broadly that we caught everybody in our net.

Number two, when we're acting as mediators we're not practising law; however, our work may well involve—I'm quoting the statute now, subsection 1(5): "the application of legal principles and legal judgment with regard to the circumstances or objectives of a person." That statement is too broad, too ambiguous. It can't provide us with legal guidance, and what I'm concerned about is it won't provide the law society with guidance as to who it ought to prosecute.

The next point is that, as mediators, we act as impartial facilitators for a wide range of disputes. In many cases, counsel are present for the resolution of these disputes. When an agreement is reached and a binding settlement document is prepared, it's prepared, in some cases, with lawyers present. They may draft it or we may assist in the drafting of it. It's witnessed, signed in the presence of the parties and their counsel.

In the case of unrepresented parties, as mediators, who, like Peter, helps people resolve relationship disputes, they will work out a memorandum of understanding. As mediators, we instruct people not to sign or witness it in our presence. We encourage them to get independent legal advice if legal interests are at stake. If legal interests are at stake, we strongly encourage them to get independent legal advice. However, according to section 2 of Bill 14, the mere act of drafting the parties' intentions is the practice of law and could open mediators to prosecution. Specifically, section 2 of the proposed legislation states that a person who "selects, drafts, completes or revises" a document that affects a person's interests in or rights to or in real or personal property or a document that relates to the custody of or access to children is providing legal services and can be prosecuted and fined.

As psychologists, we are often involved as assessors. We're asked to prepare custody assessments. As parenting coordinators or family arbitrators, we're asked to resolve issues related to parenting plans. Our results are incorporated either into a custody access report or a memorandum of understanding or an arbitration award. In each case, "a document that relates to the custody of or access to children" could contravene this act or appear to contravene this act. That's subparagraph (6)2(v). That means that if I ask my mother for advice about raising my children, she may be in danger and I might have to point out to her that giving me advice on issues related to children may violate the act.

The next concern is that the act—I've said it already. Our concern is that doing any of those kinds of reports or memoranda or parenting plans all violate the act. This could have a really negative impact on the opportunity for people to select non-adversarial options for resolving their disputes. This is at a time when access to the courts and legal services is financially out of the reach of many people.

I have already given you my conclusion, which is that we should not be covered by this act or we should be specifically exempted from it. It's far too broadly worded. It catches too many people in the net.

Thank you very much for your time and patience. I'm open to questions.

0940

The Chair: Thank you. We'll begin with Mr. Kormos. There's about four minutes each.

Mr. Kormos: Thank you to both of you. I was waiting for your submission.

I say to Mr. Zimmer, these are two very smart, extremely experienced people. St. Stephen's—and I know people are familiar with it—sets the bar for community mediation in this country.

I underscore Mr. Bruer's comments, "Nor do we feel it is wise to leave the legislation as it's now written and expect the law society to pass bylaws exempting mediators." This Legislature has to write the legislation. You can't delegate this stuff away; it would be irrespon-

sible. It would be, in and of itself, delinquent on this Legislature's part if it were to do that.

You know that a big chunk of the presenters to these hearings are going to focus on the so-called definition, the provision-of-legal-services part of the act. I put it to you that you can let us focus on other elements of the act with due attention by simply coming forward and explaining how the government proposes to address this. If you're going to leave it to the law society, then say so, and then these people will have to ramp up their efforts, all right? But you could save a whole lot of people a whole lot of work, energy, effort and grief by simply saying, "Yes, this definition was drafted in an effort to close loopholes"—because that's what I think it is—"that people might try to exploit."

I don't think it's practical to come up with a list of regulations saying, "All of the following are exempted," because once you do that, anybody who isn't specifically exempted is even more strongly included; some sort of equitable argument that they might try to make, they're barred from making it. So that's not the answer. The answer is to draft a definition that achieves the goal of regulating paralegals—and I think everyone here agrees with that goal—but which doesn't throw out so huge a net that you draw mediators, car salespeople, insurance salespeople etc. into the scope of the regulation.

Let's deal with this. Let's not just let it fester. Let's deal with it here and now over the course of this week, and then we can move on to other parts of the bill. It's as simple as that.

Thank you for your participation.

The Chair: The government side.

Mr. Zimmer: St. Stephen's is a great organization. It sets the bar. You and I have worked on a couple of projects over the years, although I haven't met your colleague until today for the first time. Thank you for your presentation.

Mr. Chudleigh: The government commitment is just really outstanding today.

During the period of the drafting of these regulations, was there any consultation with your organization by the government? Did you have any input into it prior to seeing the legislation?

Dr. Landau: We didn't have any input into it prior, but when we saw the draft, we were so concerned that I organized a meeting of representatives of all the mediation associations: the Ontario Association for Family Mediation, which I'm a past president of; the community mediation organizations; the Ontario Bar Association, ADR section, which I'm a past executive member of. We brought everybody together, about 22 people, to the law society with their legal counsel and all raised the same objections. We were told that we would be consulted on an ongoing basis, that we'd be invited back for further discussions. We didn't hear anything. I asked again for another meeting. I was told maybe sometime in the fall. Then I found out that these hearings were happening, and we would have been meeting after these hearings. We were assured at the meeting that there was no intention to

regulate us. We do know the specific individuals they're concerned about catching in their net, but it's sort of like putting a bottom trawler out and catching everything in the Grand Banks in order to protect against individuals who have clearly violated the terms of the law society.

Mr. Chudleigh: In your interpretation of this act, if it were to pass the way it was—if you were seeking some advice from mom, you'd need a lawyer present?

Dr. Landau: As a lawyer I'd have to warn her, I'd have to caution her that she might be doing the undue practice of law. I'm hoping one day to be a grandmother and be available to offer advice. I'd be kind of worried that if I did so, I'd be stepping out of bounds.

I just think that the law society has a legitimate concern and they need to regulate the unauthorized practice of law, but this way of doing it is trying to cast the broadest possible net.

I would agree with Mr. Kormos that if they list the exemptions, there are every year new methodologies created for resolving disputes in a non-adversarial way. As a society, we really want to encourage that. We don't want to frighten people out of helping people resolve their disputes reasonably.

The courts now, particularly the family courts—I think about 70% of people who appear before the judges don't have legal counsel. They can't afford it. We want to facilitate ongoing relationships where people need to get along. We want to encourage people to do it that way. This legislation doesn't do that.

The Chair: Thank you very much.

PARALLAX COMMUNICATIONS GROUP

The Chair: Next we have Ken Mitchell. Mr. Mitchell is substituting for our 10 o'clock presenter, Mr. Safronuk, who is not here. Good morning, sir. You have 30 minutes. You may begin.

Mr. Ken Mitchell: Good morning to all the members of the committee, in particular to my friend and the hard-working member from Ancaster—Dundas—Flamborough—Aldershot, Mr. McMeekin.

I'm a consultant to the Paralegal Society of Ontario. Mr. Safronuk was to be with me, but unfortunately circumstances came up and he could not join me today.

Let me first give you a little bit of my background. I'm coming, not simply as a government relations consultant but also a former paralegal. I started Hamilton Paralegal back in 1978, and I provided services to large numbers of members of the bar in the city of Hamilton. So I come with a background both in where paralegals are coming from and where they want to go.

A previous speaker said that she would start with conclusions and go to the beginning. I'm going to do it the other way around, because I want to keep you all on the edge of your seats, listening to every word I have to say.

I'm going to start off by talking to you about my topic, which is the situation that exists in the family courts in Ontario today. I'm going to describe that situation to you.

I'm going to talk to you about a study I did on behalf of the Paralegal Society of Ontario which reinforces that position. I'm going to tell you why Bill 14 as it's drafted doesn't work, and then I'm going to bring you a simple solution, a simple change to Bill 14 that can address a serious problem in today's family courts. Finally, I'll paint a vision for you of the savings, not just the monetary—the economic—savings, but the social savings that can ensue by making some very simple changes to Bill 14.

It was only two weeks ago that Chief Justice Beverley McLachlin told a law conference in Newfoundland that there is an epidemic of non-representation in Canadian courts. She said as many as 40% of Canadians are not represented in courts today.

Seven years ago, Mr. Justice Peter deC. Cory—and you'll hear a lot about the Cory report—noted in his report that deputy judges from the city of Toronto told him that non-representation in Family Court in Toronto reaches levels of 80%. In fact, it was Deputy Judge Zuker who was reported in the Cory report. I am here to tell you that Madam Justice McLachlin was an optimist, and that the numbers are somewhat higher than she quoted.

0950

Two weeks ago, the Paralegal Society of Ontario asked me to conduct a very simple survey. I'm not going to present this as a scientific survey; it's a snapshot, and I'll go into the methodology later. This survey shows the situation as it existed in the family courts of Ontario in the last two weeks. The way this survey was conducted was that we had representatives go into family courts in nine centres in Ontario, and all they did was count the number of cases on the court docket, they went back and recounted the number of parties who were unrepresented, and the numbers were aggregated. That's it. That's what I'm going to talk to you about and report to you. The beauty of this method is that the findings can be validated any day. Any one of you can walk into the Family Court in your own jurisdiction and confirm these numbers.

In the counts, if there were 50 cases on a court docket, generally there were 100 parties, one on each side. There may be more in some situations, and these would have been when government agencies or children's aid societies were involved. Those numbers were discounted, because those parties were virtually always represented by counsel.

Here are my key findings, and they're very simple; it's nothing to blow you away. There were 1,494 cases on the family law lists last week in the courts that we visited; 685 of those parties were there without representation. They were there on their own; they were going it alone in Family Court. That works out to 46%.

There are some observations that I want to make.

Even from our small snapshot, we found that the number can vary greatly from day to day. For instance, in one court, I believe, one day the non-representation was 19%, and the next day it was up to 82%. I think that deals with the types of cases that are on the list. A real, in-depth study needs to be done of the family courts to

determine why people are showing up without representation. That wasn't the purpose of this study.

The highest rate of unrepresented parties was in the city of Toronto. In one Toronto court, at 43 Sheppard, the two-day average was 64%. That is Judge Zuker's court, where he practises. It was very close to the 80% that he reported to Justice Cory.

The very highest day rate of non-representation was in Thunder Bay on August 23. This is the day that there were a number of cases under the child protection act on the list. On this docket, there were 84 parties that were not represented. Our agent up there noted that many of the families were of aboriginal descent, and they were appearing in court without any form of legal representation.

That's the situation as we find it in Family Court.

Why doesn't Bill 14 address this? Bill 14 is the Access to Justice Act. Schedule C—that's what I'm here to talk about—is here to license and regulate paralegals, which is a lofty goal, but the licensing in and of itself does not provide any more access to justice. All it does is go some way to ensure that those who are appearing are qualified to do so, but it doesn't ensure any more access to justice.

It may be the position of the government that they'll say, "When we deal with areas of practice in which these newly licensed paralegals can operate, the law society will deal with that, and they will determine whether paralegals can appear in Family Court to help these non-represented parties." Well, my clients at the Paralegal Society of Ontario don't share any optimism that that will be the case. In fact, the reality is that since 2000, when Justice Cory reported these large levels of non-representation in Family Court, absolutely nothing has been done, and it goes on until this day.

I also note that in the study that the law society's task force on paralegals conducted and reported to the government in September 2004, two years ago, they dealt with pages and pages of stakeholders—this organization and that organization, this group and that group—but nobody consulted with the end user of the legal system, the actual person who goes into court as a litigant, and nobody went into the family courts and asked these people who were appearing without representation why: "Why do you choose to go it alone? Why don't you have a lawyer here?" Nobody asked them, "If you had an option of having a relatively low-cost paralegal to help you, would you like to have that option?" The key people in the province of Ontario have never been asked.

Some will say that in the family law rules, rule 4(1)(c), judges of the Family Court are allowed to let paralegals, or non-lawyers, as they refer to them, into their courts to appear. But they must do it by permission and the permission must be sought in advance. That sounds fairly good. Nothing, on the surface, is wrong with that. But the reality is that in case after case, the judges reach for legislation, stretch, and find ways to keep the paralegals out of Family Court. So they can't come in there, even though the Family Court rules allow it. Many of the reasons these judges use for keeping the paralegals out

are actually addressed in your legislation. They say paralegals have no duty of confidentiality. Well, that is addressed in the legislation and regulation. They say they don't report to a regulatory body. That will be addressed. So some of those reasons will disappear.

But the number one reason that every jurist uses to keep a paralegal out of Family Court goes back to the Solicitors Act, section 1, which is an old piece of legislation. It's a bad piece of legislation. It wasn't intended to override the rules of the Family Court and it wasn't intended to override the Law Society Act, but they use it to do that. They say, "Because you are not a solicitor, you can't collect fees and you can't appear in my court, and I can't apply rule 4(1)(c) because that would be neglecting a statute on the books. That would be asking me as a jurist to do something unlawful." I'll come back to the Solicitors Act later on when I have some recommendations for you.

But the absurdity that happens in today's Family Court goes beyond that, because as judges reach and stretch to keep paralegals out of Family Court, they really don't care and they really don't mind if unpaid persons come in and help friends and family in Family Court. As stated in one case—and the case is noted in your submission; Justice Quinn was dealing with the appearance of a non-lawyer, non-paralegal, simply a person who was a friend of the family—"If there is to be a test, I ... think it has to be of the subjective-objective variety; that is to say—does (the party) honestly believe that he would benefit from the assistance of his friend and does that belief appear to be reasonable in all of the circumstances?" And Justice Quinn goes on to say, "Identifying a level of core competence for an unpaid, non-lawyer ... friend is nigh unto impossible and so, when considering such agents, the suitability quotient should not be too high."

So what our judges in Family Court are saying is, "As long as you're not a paralegal, you can come in here and talk to the court, but if you're a paid paralegal, we don't want to see you."

I can tell you—and I brought out my paralegal pass so that the anecdote I'm going to tell you will make some sense. Just about this time last year, I went into Family Court as a non-paid person to help a dear friend deal with resolving a family law matter. The presiding judge would not hear me, would not listen to me, looked through me, and my friend, who is not a skilled speaker, virtually trembling at the idea of addressing a judge, couldn't speak. So we adjourned the matter to another day. We hired a lawyer the next day, paid the lawyer \$2,000, and the lawyer sat there while I negotiated a settlement, told the lawyer what to do, what to go in and say, and the lawyer did it. The only function of the lawyer was to repeat my words in the settlement that I drafted to the trial judge: \$2,000.

This is the situation in Family Court, and this is what the government needs to address in Bill 14.

I'm going to give you a simple solution, and that is—I'll come back to it over and over again—simply amend schedule C, whether you do it in your preamble or wheth-

er you add a specific clause, but give clear direction that the purpose of schedule C is to increase access to justice and that once licensed and regulated, be that by the law society or any other group, paralegals should have the right to appear in Family Court. Then, I suspect you'll see the numbers of non-represented parties decline dramatically and there will be greater access to justice in the province of Ontario.

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The benefits are manyfold.

First of all, the benefits are to the people, the consumers. These are the litigants who go into court. These people will now have a choice: They can get a lawyer, if it's a complex case and they need one; they can get a paralegal to go in and advocate for them; they can hire a paralegal to simply fill out the forms so they get it done right for when they go in; or they may still choose to appear unrepresented. But there will be greater access to justice because the consumer—the Family Court litigant—will have a choice.

The benefits to the court staff—talk to the court staff. The amount of time they spend there filling out the forms and helping people fill out the forms properly is wasted time if a professional can do it. Someone who is skilled in filling out forms can do it for them. So the court staff time will be saved, and that saves the government money.

Talk to the family law judges or simply go back and read the Cory report and see what the deputy judges reported. They talk about—and this is confirmed by Madam Justice McLachlin, where she says the amount of time spent by jurists coaching unrepresented litigants is a drain on the court. "We have to tell them about the process, we have to tell them about the rules, we have to tell them about the rules of evidence, and we have to do that and try and remain impartial," which is not easy for a jurist to do, but God knows, they try to do it.

So judges will be more efficient, courtrooms will be more efficient, lawyers will benefit, because if you allow paralegals into Family Court, then the natural progression is that many family law lawyers will hire paralegals on staff for the purpose of appearing in Family Court on the non-complicated matters, the ones they don't need to be there on. I know there are many lawyers sitting around the table, and if you've been in Family Court—if you've been in any court—on motions day, and you look around and you see the amount of high-priced talent at \$300 and \$400 an hour sitting there waiting for a case to be called simply to ask for an adjournment, then you can see how paralegals going in to address the court can actually make the whole process more effective.

Of course, the government will certainly benefit because the government will save costs, clearly, if the courts are more efficient, but more importantly, the government and the courts will achieve a level of legitimacy that they don't now have. You can well know that that unrepresented litigant who goes in and walks out with a decision that's unfavourable, walks out with a bad taste in his mouth and thinks, "If only I could have afforded a lawyer, if only I had help," and so on. The legitimacy of

the courts suffer in their eyes. So if you make the courts more effective, if you make them more efficient, if you give them the tools to deliver better decisions, speedier decisions, more just decisions, everybody benefits.

Here are my recommendations to the committee: First of all, amend section 1 of the Solicitors Act so that it allows licensed and certified, regulated paralegals to appear in Family Court. Secondly, amend Bill 14, schedule C, section 19, to include a clause that allows licensed and regulated paralegals to appear in Family Court. As I suggested, that could be done as a specific clause or simply in the preamble, but in some way give direction to the law society that this is a desirable result for the people of Ontario. Finally, adopt the recommendations of the Paralegal Society of Ontario which are contained in your paper, as to the scope and levels of practice which are appropriate for paralegals to handle in Family Court.

You'll hear over and over again from many members of the Paralegal Society of Ontario who are speaking to you in the next two weeks, and they will have one message for you: We are committed to regulation. It's a good thing. But any regulation of the profession must take into full consideration the interests of the general public and Family Court litigants. The Access to Justice Act will fail in its promise if it doesn't provide for the tens and thousands of Ontarians who appear every year in Family Court without legal representation. By allowing regulated, certified paralegals to fill this gaping void, a major step will be solved in the problem of affordable access to justice in Ontario.

Thank you very much for your time.

The Chair: Thank you. We'll begin with the government side, about four minutes each.

Mr. McMeekin: Thanks very much, Mr. Mitchell. As always, a very thorough presentation, thoughtful and experiential. I know a bit about your background and your concern for these issues, so I really appreciate on behalf of the government hearing your perspective today. I'm quite concerned and have, as you know, been concerned for some time about access to court through legal aid or what have you. It seems there are never enough resources to ensure that people do have the kind of access that you and I on a good day would agree they need to have.

I appreciate your specific suggestions and I want to have some time to reflect on those. I'm wondering if you could comment for the committee on the breakdown. How many paralegals are out there who are actually connected with law firms? I guess it ties into the broader question for me and that's the potential benefit or lack of benefit of having paralegals and lawyers all, for purposes of professional conduct, governed by one body, as I understand is being proposed in the legislation.

Mr. Ken Mitchell: Unfortunately, I can't. I don't have any empirical data to support the number of paralegals associated with law firms. Experientially, I find the number is significant. Usually those paralegals classify themselves as law clerks. So you can go to the numbers of the Institute of Law Clerks of Ontario and you can find that number with them. But those law clerks are not

always operating in the litigation side. Many of those will be dealing with corporate law, real estate law and so on. But I find from members of the Paralegal Society of Ontario, with whom I've been consulting, that many of them tell me that, although there's no business relationship with law firms, much of their business is referred by law firms, for a number of reasons. Sometimes, the dollar value of the case just doesn't justify the handling of a lawyer and so they refer it to a law firm. In other cases, the lawyer, who has no experience in a particular area of law, will refer that person to a skilled paralegal who they know has experience in that area of law.

Mr. McMeekin: As per your example. You were sitting in court.

Mr. Ken Mitchell: Exactly, but I could give you other examples of lawyers who do motor vehicle accident litigation, and a workers' compensation case comes along, and they will immediately hand it over to a workers' compensation specialist, likely one who's not a lawyer.

The Chair: Mr. Chudleigh?

Mr. Chudleigh: Thank you very much. The paralegals are being overseen by the Law Society of Upper Canada, which is a new system. How is that working out?

Mr. Ken Mitchell: I'm not sure I've got the premise of your question. They're not regulated now by the law society, but that is the purpose of this legislation.

Mr. Chudleigh: But they're going to be.

Mr. Ken Mitchell: You'll hear from members of the board of the paralegal society who will enunciate their position clearly, but paralegals would clearly like to see schedule C removed; further study, including studies in the areas that I've talked about; and bring it back as a piece of legislation in and of itself, because it does warrant a lot of study. As you've heard from other speakers, there are a lot of nuances to this that clearly no government can fully anticipate. Perhaps with the scope of input that comes from these hearings, including from the Paralegal Society of Ontario, there will be enough grist that it will make sense for the government to go back and pull schedule C, and come back with a well-researched, well-written piece of legislation that meets everybody's needs—paralegals', the government's and litigants'.

But having said that, if this legislation is going through, then you've heard from me and you'll hear from other Paralegal Society of Ontario presenters some specific areas. These are intended to be very constructive areas where the government can improve the legislation and obtain its objective, which is to regulate paralegals.

Mr. Chudleigh: Wouldn't it make more sense to have the regulation rest with the paralegals, as opposed to with their supposed competition?

Mr. Ken Mitchell: That's absolutely the preference. That was the recommendation of three studies done over the past: the Di Ianni study—I'm sorry, the Ianni study; I keep confusing it with the mayor of Hamilton. The Ianni study in 1989, the Cory report in 2000, and the Zemans report, which was commissioned by the Paralegal Society of Ontario in 2004, all recommended that paralegals be

self-regulated. There are very few professions in Ontario that are not self-regulated these days. The government generally eschews getting into the regulation business.

Some of the arguments are that paralegals are not mature enough to regulate themselves, but in fact that argument was made about used car dealers and real estate brokers back in the late 1990s. Once they were given the task of being self-regulated, they rose to the challenge. They put the infrastructure in place to do it, and they function fairly effectively today.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you very much, Mr. Mitchell. I appreciate your participation.

The Chair: Thank you very much for your time and your presentation this morning.

The next presentation is from Paul Mitchell of Beaches Paralegal. Mr. Mitchell? He's not here. Is there anyone else here who is presenting this morning? No.

Mr. Kormos: What time is it now, Chair?

The Chair: It's 10:12, so we'll take about a 10-minute recess. We'll be back in 10 minutes.

Mr. Kormos: Nobody's late. We shouldn't create the impression that he's late. If it's 10:35 and he's not here, then he's late.

The Chair: No, that's not the intent at all, Mr. Kormos.

Mr. Kormos: I'm just trying to clear it up, because I'll be making note of the fact at 10:35.

The Chair: We'll be having a short recess for 10 minutes.

Mr. Zimmer: Till 10:30?

The Chair: Till 10:25.

The committee recessed from 1012 to 1032.

ALPHA PARALEGAL SERVICES

The Chair: Seeing that our 10:30 a.m. presenter is not here, we're going to have our 2:20 p.m. presenter, Alpha Paralegal Associates, Ms. Rivka La Belle. Good morning. You have 20 minutes and you may begin.

Ms. Rivka La Belle: My name is Rivka La Belle. I have been a paralegal since 1989 and operate a small paralegal firm as a sole practitioner. My area of practice consists of small claims court, landlord and tenant disputes, and family law matters. Since 1998, the main focus of my practice has been to deal with family matters in the Ontario Court of Justice.

In my previous career, I worked for 20 years as a registered nurse. In 1988 I took a business course at Atkinson College at York University, and then I was trained by another paralegal to start my paralegal business. Thereafter, I have been attending many educational seminars and paralegal courses in college to further upgrade my education in the areas of law which I was interested in.

In 1995 I attended a civil litigation course which was offered by the Institute of Law Clerks at Seneca College. In 1998 I completed the family law course offered through the Institute of Law Clerks at Humber College. I

also taught family law one semester at Sheridan College in Brampton. I am a board member of the Paralegal Society of Canada and the Paralegal Society of Ontario.

My submissions to you relate to schedule C of Bill 14 only. I have no issue with the other parts of the bill.

I agree that paralegals should be regulated. However, I support the regulatory framework proposed by the Honourable Peter Cory in his Framework for Regulating Paralegal Practice in Ontario, published in 2000. Justice Cory said that by regulating the paralegal profession, "the public will be protected and boards and tribunals will be assured of adequate representation by qualified, competent paralegals. These goals can only be achieved by the establishment of a governing body which will license and regulate paralegals."

The Cory report recommended the establishment of an independent board similar in structure to Legal Aid Ontario to oversee the regulation of paralegals. Schedule C of Bill 14 proposes to amend the Law Society Act and have the law society oversee the regulation of all persons who are licensed to practise law as barristers and solicitors as well as all legal service providers in a wide range of industry, including paralegals.

This bill will create a regulatory monopoly in the industry. Such a monopoly will cause an increase in the cost of access to justice to both small and medium-sized businesses as well as to the public. Such a monopoly is contradictory to the Competition Act, 1986.

There is an adversarial relationship between the law society and paralegals. Bill 14 puts the regulation of paralegals in the hands of the competition, the law society, which fails to ensure that paralegals will be dealt with on a fair and an even-handed basis, nor does it ensure the best interest of the public consumers. No other professional body—e.g., midwives, nurses, denturists, accountants, mortgage brokers—has ever been forced against its will to accept regulation by a competitor.

On April 18, 2006, the treasurer of the law society, Gavin MacKenzie, was quoted in the Toronto Star stating, "Paralegals will be limited to working in Small Claims Court and on things like traffic cases and workers' compensation claims. Once training standards are better established, services could be expanded, MacKenzie said.

"For now, they won't be allowed to do things like simple land transfers or divorces—services paralegals openly advertise, but which the law society says they can be prosecuted for performing."

Because this bill leaves all the regulatory decisions up to the law society, we can take Mr. MacKenzie at his word and expect that the intent of the law society is to restrict areas of practice of paralegals. As a result, the law society views this bill as nothing more than a licence to get rid of paralegals, the low-cost alternative to expensive lawyers.

This direction in legislation is contrary to what is now the progressive practice in enlightened jurisdictions in free and democratic countries. Their practice is to make laws granting autonomy and maintain the rights to self-

regulation to each organization for the lawyers and non-lawyers.

The following is a quote from a speech delivered by the Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer of Thoroton, delivered in the British Parliament in speaking to the new pending legislation on regulation of legal services in England and Wales. The speech was made on May 24, 2006. The article is attached. Lord Falconer said:

"Our proposals also provide for the creation of an independent Office for Legal Complaints, which for the first time will remove the handling of legal complaints from the legal professions. The OLC will help to foster greater consumer confidence and result in quick and fair redress.

"The draft legal services bill also sets out arrangements to facilitate alternative business structures, which would enable different kinds of lawyers, and lawyers and non-lawyers, to work together on an equal footing. These structures will allow legal services to be delivered in new ways, promoting greater competition and innovation and enabling providers to better respond to the demands of consumers. A range of safeguards will be put in place to protect consumers and demand high standards."

I am urging this committee to remove schedule C of Bill 14 and support a new bill implementing the recommendations of the Honourable Peter Cory, i.e., create a self-regulatory body to regulate paralegals and enshrine areas of practice for paralegals in the legislation.

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Access to justice in Family Court: On page 64 of the Honourable Peter Cory's report, it says, "... Justice Zuker stated that in his court, which is located in North York, parties were unrepresented in 50% to 75% of the cases. Justice Brownstone, whose court is located in the East Mall, reported that in 75% to 85% of his cases the parties were unrepresented. From this it can be inferred that many of the most vulnerable people have no representation or assistance whatsoever in their family law problems. I was told that court employees are prohibited from assisting parties in any way, even in preparation of the requisite forms."

These litigants are unrepresented because they cannot afford a lawyer and they do not qualify for legal aid counsel or duty counsel. The majority of parties have no meaningful access to justice. The current system has failed them miserably.

The demand for service far outstrips the government's and the law society's abilities to provide it in an affordable way to those who do not qualify for legal aid and those who have insufficient means to retain a lawyer when average rates begin at \$250 per hour plus GST.

Currently, rule 4 of the Family Law Rules provides an avenue to a litigant to ask a judge of an Ontario Court of Justice by way of motion to grant him or her permission to be represented by an agent in a Family Court proceeding to deal with an issue of custody of a child, access and support matters. Some judges have an outright bias against paralegals and will not allow any paralegal to

represent a client in their court. Other judges have taken a more enlightened view and have given permission to selected paralegals demonstrating competence to appear in their court. I am one of the very few paralegals who have consistently been granted leave to appear in Family Court in the last 10 years.

The requirement for consumers to ask the court in advance for its permission to have an agent represent them in a court proceeding is an obstacle which is intimidating to consumers in an uncertain and stressful process. It is unfair to the consumer that she cannot expect with certainty that the court will allow her representative of choice, a paralegal, to represent her.

I represented litigants in Family Court matters who for the most part could not afford a lawyer, and without my competent help they would not have had a degree of success in their case had they been forced to handle it by themselves. I also have clients who come to me after their funds have been depleted and they have no more money to keep a lawyer on the case.

For example, I once represented a couple who were grandparents to a teenager. The parents of this child were divorced and both were remarried to new spouses who were hostile to this child. The child was in the sole custody of his mother, who had additional children born to her new family. This child, as often happens, had some heated arguments with his stepfather, one of which ended by the youngster being assaulted by the stepfather. It was not possible for this child to remain in this household.

The grandparents came to see me very shortly after these events, telling me that they wished to have custody of the child, they love him very much and they have a great bond with him. They went to see a lawyer, who told them that they were facing a very complex and lengthy litigation with a questionable outcome. The lawyer asked for a retainer of \$5,000 and could not give them an estimate for the entire fee involved. The grandparents, living on a pension, could not afford a lawyer. Fortunately, the judge presiding over this case granted me permission to represent the grandparents. The end result of this matter was that the grandparents were awarded custody of their grandchild. My fee in this matter was \$1,000.

The trend in family law is towards mediation and collaborative law. Lawyers are trained to be adversarial, and very few of them really seem to embrace this new trend. This combativeness is costly, often stripping a family of all their savings, assets, equity and future security. Stuck with many unresolved issues, these families and their children are the most vulnerable members of our society. In my experience, paralegals tend to be more collaborative with the opposing counsel or party, or tend to mediate the dispute and practise a non-adversarial style of facilitating settlements. Paralegals have an essential role in helping parties to resolve their differences through mediation and offering lower-cost litigation if it becomes necessary.

A litigant should have a choice of retaining a lawyer or retaining a qualified, regulated paralegal to assist him

with his court matter. Regulations of legal services must leave the consumer a choice in the level of service he/she wants to retain. Paralegals can provide the necessary service at greatly reduced costs, which may well allow litigants to find assistance and appear in court with skilled representation. All stakeholders—litigants, judges, court staff, the government and even lawyers—will benefit from improved efficiencies and cost savings when paralegals are allowed to appear in Family Court.

The government and lawyers can pick and choose to use paralegal and law clerks should they choose to reduce the cost of their legal services as a budgetary and/or leveraging method for service delivery or business profitability. For example, municipalities use paralegals for bylaw prosecution, and the Family Responsibility Office uses social workers to draft separation agreements in which the parties waive their legal rights etc. Unfortunately, the ordinary person is being routinely denied that same ability to reduce their costs and have access to affordable justice.

Legal aid does not have the funding to provide the answer, nor should the taxpayers of Ontario be burdened with the cost of doing so. For example, legal aid will not fund a child support or spousal support variation proceeding. A parent who has an obligation to pay such support as a result of a previous agreement or court order and who then experiences loss of employment or reduction of income, in most cases will not be able to afford a lawyer and will have to continue making support payments before the agreement is varied in court. Duty and/or advice counsel cannot help the party, as most parties routinely fail the legal aid means test, so the party cannot get effective help in pursuing a claim to the court to ask for a change of the existing order. Access to justice is effectively denied. Such a litigant is often branded as a deadbeat, and the director of the Family Responsibility Office can seek—and does seek—licence suspensions, passport denials and now, often at first instance, jail time upon default of paying child support.

This committee has the opportunity to ensure true access to justice by abandoning schedule C of Bill 14 in favour of a new bill granting self-regulation to paralegals, as recommended in the Cory report, or, in the alternative, making changes to this draft legislation to require that the law society allow regulated paralegals the right to appear in Family Court, to be hired as legal service providers in family law matters and to be hired by the public to produce the very documents relied upon in Family Court.

Failure to do this is a fundamental denial of access to justice, particularly for women, low-income Ontarians and new Canadians from ethnic communities, and will bring the administration of justice into disrepute. Ontario will see more miscarriage of justice and process delays. Self-represented litigants will be frustrated with the complexities of issuing, filing and serving documents and in comprehending the paperwork required and the information that is needed. Bad court decisions will ensue when self-represented litigants are unable to articulate and advocate effectively on their own behalf.

I ask this committee to remove schedule C from Bill 14 and ask the Attorney General to prepare a new act based on the Cory task force report or, alternatively, to specify in the legislation the right of licensed paralegals to provide their services in family law matters, permitting them to appear in the Ontario Court of Justice, the Family Court of the Superior Court of Justice and the Superior Court of Justice in the following matters outlined in the Paralegal Society of Ontario's white paper:

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—to prepare, file and otherwise assist the public in the preparation of all paperwork for all matters to be taken before the Unified Family Court of the Superior Court of Justice, the Ontario Court of Justice and the Superior Court of Justice;

—to prepare draft separation agreements resolving all issues, provided that the parties are then referred to a lawyer to obtain the certificate of independent legal advice;

—to assist in the area of family mediation;

—to represent the parties in both the Ontario Court of Justice and the Superior Court of Justice at all stages of the process in the following matters: all applications and motions for child support, child access and for spousal support, including divorce applications; all applications and motions dealing with property issues, including division of the matrimonial home, where the value of the property, excluding the matrimonial home, is less than \$25,000; matters involving the Family Responsibility Office, including default hearings and motions to vary existing support orders; matters under the Child and Family Services Act dealing with child protection cases; licensed and certified paralegals shall be entitled to obtain legal aid for qualified clients at approved paralegal rates; licensed and certified paralegals shall be permitted to act as representatives in the court under the legal aid duty counsel program.

In summary:

(1) It is a conflict of interest for the law society to be the regulator of paralegals.

(2) Lawyers have had many years to adjust their practices to address the problem of affordable access to justice, and they have failed to do so.

(3) Under Bill 14, the law society shall have the right to determine areas of practice permitted by paralegals. The law society will restrict the permitted areas of practice, and as a result, the public's access to justice shall be restricted.

(4) The public will face an escalation in the cost of obtaining legal services rather than the decrease in costs that is the stated purpose of this regulation.

I therefore recommend to this committee that schedule C of Bill 14 be removed and a new bill prepared to create a self-regulatory body to oversee the professions, in accordance with the white paper presented by the Paralegal Society of Ontario, which is based on the recommendations of the Cory task force report. In the alternative, amend Bill 14, schedule C, to specify in the

bill itself the permitted areas of practice of paralegals, especially specifying areas of practice in family law.

I thank you for the opportunity to address the committee and for your kind attention and consideration.

The Chair: You're right on. You've used your 20 minutes. Thank you very much for your presentation.

PARALEGAL SOCIETY OF ONTARIO PARALEGAL SOCIETY OF CANADA

The Chair: The next presentation is from Mr. Paul Mitchell of Beach Paralegal. Good morning. You have 30 minutes. You may begin.

Mr. Paul Mitchell: My topic here today has to do with grandfathering. It's a subject that hasn't been brought up too much, and I don't believe it's in the legislation very much.

Briefly, my background is that I graduated as a law clerk from Centennial College of Applied Arts and Technology in 1983. Since that time, I have operated a paralegal business employing several staff. I am a founder of the Paralegal Society of Ontario, as its membership director, and more recently, I have been involved with the Paralegal Society of Canada, as its treasurer and membership director. From the onset of these paralegal societies, the ultimate goal is to organize everyone involved in paralegal practice and thus bring some credibility to this profession. I was also involved in the formation of the errors and omission insurance program that our members subscribe to as part of their membership.

You will hear from many paralegals in these hearings. The areas of work in which paralegals are involved make it very difficult to make everyone come to the table in a cohesive manner. You will find that we have one thing in common: If done in the right way, we believe that regulation can be a good thing for the people of Ontario and a good thing for paralegals.

The general perception is that at the present time in Ontario, professionals who operate and carry on business in the paralegal profession have no accountability to anyone except the general public. This, of course, is not true. The public, for all intents and purposes, does regulate and control the profession. They regulate the profession by rewarding competent paralegals with their business and putting incompetent paralegals out of business. The courts and tribunals in which paralegals appear regulate the profession. Jurists are adept and not at all unwilling to chastise the incompetent practitioner in open court. This affects a paralegal's ability to attract clients and remain in business. The liability insurers who provide our errors and omissions insurance regulate our profession. Only competent paralegals without a claims history are insurable. The only reason for government regulation of paralegals is to give the general public a single place to turn, if and when they have a complaint about a paralegal's service.

The Paralegal Society of Ontario has taken steps to address the areas of concern and has dealt with some of

the complaints to the point that the complainant is now satisfied with the results. These practices were put in place long before any steps were taken by any authoritative body to regulate the profession. The Paralegal Society of Ontario has also developed a code of conduct which members agree to adhere to when they join. These are positive steps that we feel have been taken in our own way to try and bring legitimacy to our profession.

At the present time, there are numerous areas in which paralegals practise. Clear guidelines need to be developed in order to achieve an end result that is beneficial to the people of Ontario, particularly low-income families and ethnic communities, as well as the paralegal profession. Specifically, there are many paralegals who have been practising in niche areas for over two decades, and they have become very proficient in what they do. Any regulation scheme for paralegals must ensure that long-time-practising paralegals may continue to serve.

Historically, the government, when legislating the regulation of a profession in which people have been working for a number of years—the legislation has always included a grace period in which long-time practitioners are exempted from the certification process. The rationale is that long-time practitioners have acquired practical skills in their area of specialty but may not, due to age and other considerations, test well in certification examinations.

The Paralegal Society of Ontario and the Paralegal Society of Canada have developed several suggestions on how long-time-practising paralegals can be grandfathered under this legislation. Bill 14 in its present format gives no consideration for people who have been working in niche areas of the law. Usually, their niche specialty is all they know. Contrast this with lawyers who go to law school and are introduced to all areas of the law, only later developing a specialty area of practice. Paralegals have reversed this process, developing niche skills to high levels of technical expertise, usually through years of hands-on practice. These paralegals restrict their practice to their area of expertise, and it does not make practical or economic sense to require niche experts to write and pass a generalized examination.

Today's paralegal, tomorrow's legal service provider, should not be required to go through a comprehensive certification process. Most paralegals currently in practice will be happy to meet qualifying standards in their niche area of expertise. They do not want to have to go back to school to learn areas of law in which they will never, ever practise.

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The paralegals of whom I speak have core competencies in traffic court, workers' compensation claims, immigration, family law, bankruptcy, and credit and collection. The paralegals of whom I speak practise only in their areas of expertise. A paralegal who manages a worker's compensation claim does not need to know the defences to a careless driving charge. A paralegal who completes forms for an uncontested divorce does not need to know how to arrange an independent medical

examination for a worker's compensation claim. A credit and collection specialist operating in Small Claims Court does not need to know how to complete family law documents.

It would not be in the best interests of anyone—courts, tribunals, government, lawyers, paralegals or the public—to pass this legislation without provisions for grandfathering the right to practise for currently practising professionals. To do otherwise would have three adverse consequences: It will put some paralegals out of business; vital niche skill sets will be lost to the general public; and the cost of these core paralegal services that survive will increase.

There are numerous examples of professionals that have been exempted from mandatory certification or qualification when regulatory legislation was passed. Accountants, insurance brokers, insurance adjusters and real estate agents are but a few. A more common one that people would know is paramedics. They started out being strictly first aid providers. Over the years, people who were left in it were allowed to upgrade to today's skills. They're now referred to as paramedics, where they can use all kinds of lifesaving skills on the scene. Years ago—25 or 30 years ago—they couldn't do that. They were allowed to stay in, and they've stayed.

The solution of the PSO has been set out to the government, and I'll summarize part of it here. Fortunately, there is a solution to this problem. There is a means to serve both the interests of the public—consumer protection—and the paralegal profession. The Paralegal Society of Ontario and Canada recommend the following:

—All practising paralegals aged 60 or older and with at least five years' experience practising in a niche area of law should be fully exempt from the qualification and certification process put in place by the regulator;

—All currently practising paralegals with at least two years' experience practising in a niche area may elect, within two years of the passing of this legislation, to directly challenge the qualification and certification process put in place by the regulator; or, at their own expense, present their qualifications to a peer review committee established by the regulator, whose findings shall be binding.

The public will be well protected, even when currently practising paralegals are exempted from the certification process. Even though exempt from writing qualifying examinations, these practitioners will still be required to take mandatory continuing legal education courses to maintain and upgrade their legal skills.

To summarize, paralegals currently practising have valuable niche skill sets that will serve the people of Ontario. These experts should not be required to acquire skills in areas of law in which they will never practise. If this legislation is passed, it should include provisions for the grandfathering of currently practising paralegals. To do otherwise is a waste of economic resources and will only lead to fewer practising paralegals with the expert knowledge and skills that Ontarians utilize every day.

Thank you very much for the opportunity to speak.

As a point of clarification, I've mentioned in my speech the Paralegal Society of Canada and the Paralegal Society of Ontario. I've been involved with both of those organizations, and here, today, this submission is on behalf of both organizations. Thank you.

The Vice-Chair (Mrs. Maria Van Bommel): Thank you, sir. That leaves us about six minutes for each side. Sir, would you—I'm sorry. The committee would like an opportunity to ask you some questions and make some comments, if that's okay.

Mr. Paul Mitchell: Very well.

The Vice-Chair: Mr. Chudleigh, please.

Mr. Chudleigh: Thank you for coming, sir. I take it you don't feel you're going to get a fair shot from the law society, which is probably true. That's a good sense of your competitors. You suggested that there should be a grandfathering involved. Do you have any suggestion as to what that period of time of service might be? Would five years of experience—are you talking 10 or 15? What kind of—

Mr. Paul Mitchell: In some of the discussions that we've had with the associations it's been in the range of five years. That's what we've been discussing. I don't think we've actually tied it down to whether it's five or 10 years, but at least five years.

Mr. Chudleigh: Has there been any suggestion that in that five years there should have been no complaints against that person through some recognized organization? If there have been any legal situations that have been brought because of their operations as a paralegal, should that be part of that consideration?

Mr. Paul Mitchell: There was some touching on it, but I do personally think that it should be one of the criteria that are involved.

Mr. Chudleigh: Good. Thank you very much.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, Mr. Mitchell. I've not seen the letters "PLL" before. They stand for?

Mr. Paul Mitchell: You'll see a few people have got PLL. In the Paralegal Society of Canada, we applied to Industry Canada, I think it was, to get some sort of a designation. The designation had certain qualifications that had to be met in order to have that designation behind your name, recognized by Industry Canada. The actual qualifications escape me at the moment, but if the committee needs them, I can dig them up and get them for you. Any members who wanted to qualify for that had to be in business for a certain length of time and had to have some references and whatnot presented for them. But we've got the authority from Industry Canada to be able to designate that to anybody who meets the criteria that we've set down for it.

Mr. Kormos: PLL?

Mr. Paul Mitchell: Paralegal litigator. You have to be in the litigation business, collection and suing. "Para," "legal," "litigator."

Mr. Kormos: Hence the two Ls.

Mr. Paul Mitchell: That's right.

Mr. Kormos: Gotcha. Thank you kindly.

The Chair: Thank you, sir, for your time and your presentation.

Mr. Paul Mitchell: Thank you.

MARK BROWN

The Chair: The next presenter is Mark Brown.

Mr. Mark Brown: Good morning, ladies, gentlemen. Actually, I'm a practising paralegal myself. I've been in practice for about five years now. I'm also currently enrolled in Seneca College. I'm taking the accreditation that the law society is proposing. I don't have any problem with that.

There are three proposals that I've asked for to be amended to this bill, the first one being that the law society itself and the government have said that they agree that certain areas of our practice should be in law for paralegals, such as Small Claims Court, tribunals etc. I would like these proposals written into the bill. If it's written into the bill, then paralegals like myself will know that at least we have these areas that we can practise in. If it's in the bill, the Law Society can't unilaterally change this.

This is of great concern to me. As a paralegal, how can I accept new clients when I don't even know if I'm going to be allowed to practise the next month? How can I do this in good faith? I think everyone here will see this as a reasonable request. The law society says they're in favour of it, the government is in favour of it, so why not put it in the bill?

The second proposal I'm asking for is that the Attorney General be in charge of the paralegal regulation committee and not Convocation. As I'm sure you're all aware, the Convocation is going to be 40 lawyers, eight laypersons and two paralegals. To me, this is just ridiculous. Paralegals have no say whatsoever. I feel, according to the Constitution of Canada, it's the Attorney General's and the province's responsibility to regulate the legal system, not the law society. The Attorney General is the one who is elected. I would be much happier with the Attorney General regulating me as opposed to someone I'm competing against. I'm sure everyone can understand that. For example, Canadian Tire would not like to have Wal-Mart determine where they can practise and what kind of business they can do. How could they compete? What's Wal-Mart going to say—"We want competition"? Of course not. If you would do this, you would remove the conflict of interest from the law society.

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The final amendment I have asked for is that as far as areas of practice are concerned, after a two-year transition period in which all paralegals are regulated, we're all controlled, we all have errors and omissions insurance, that they have a look at the Ianni and Cory reports and see about expanding the practice of paralegals and what the law society has said now. To me, it makes no sense whatsoever to have the areas of paralegal practice greatly restricted once they're regulated. When you're not regu-

lated, you can do whatever you want, there are no rules; and when you're regulated, you can't do anything. That's what it says: There are no areas of practice we can do at all. It's up to the law society. Who knows what they're going to say?

Those, in short, are the three amendments I've asked for. You can read them over yourselves. Are there any questions anyone would like to ask of me?

The Chair: Thank you. Government side, any questions?

Mr. Zimmer: You realize, of course, that within the law society there will be a paralegal committee set up. There will be five paralegals on it and five lawyers. There will be three citizens at large, neither paralegals nor lawyers, representing the public interest, if you will, and that committee will always be chaired by a paralegal.

Mr. Brown: I'm happy with that. I have no problem with that part of the legislation. It's just that if there's a dispute and the committee cannot resolve any issues, it's going to go to Convocation, and in Convocation it's 40 lawyers, eight laypersons and two paralegals. To me, this is giving basically a private monopoly to the law society for legal services in Ontario, and I don't see how a private monopoly is going to help competition or lower costs for business, lower costs for low-income and middle-income earners when they need routine access to justice.

The Chair: Mr. Chudleigh?

Mr. Chudleigh: Thank you. I enjoyed your presentation. I like your three amendments. They look like a reasonable approach to the problems that are being faced. I can't understand why anyone would think that the Law Society of Upper Canada is going to give the paralegals a fair shake. I think that both the paralegals and the public at large deserve to have some regulation involved in paralegals; they are doing pretty sensitive things for individuals, in court and otherwise. That's agreed to by all the paralegals I've talked to.

Mr. Brown: Yes, I want regulation. I'm very happy to be regulated.

Mr. Chudleigh: It gives some credibility to the profession, and the regulation would include levels of insurance; it would include certain levels of education. I understand you're currently involved in the course.

Mr. Brown: Yes.

Mr. Chudleigh: Those are all good things. How they expect Wal-Mart to regulate Eaton's—

Mr. Brown: Or Canadian Tire.

Mr. Chudleigh: Does Eaton's still exist? Canadian Tire—it's beyond me. Thank you very much for your presentation today.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, Mr. Brown. I don't have as Shakespearean a view of lawyers as Mr. Chudleigh, but I do appreciate your participation here.

Mr. Brown: I just want to make sure that it's in law so I don't have to hope that it can be fair.

Mr. Kormos: Thank you kindly.

Mr. Brown: I hope it will be fair, but I'd like to have it written in the bill so that they have to be fair.

The Chair: Thank you very much.

CARIN CAMPAGNA

The Chair: Is Mr. Kirshin here? No. We'll skip over to Ms. Carin Campagna. I hope I pronounced your name right.

Ms. Carin Campagna: It is closer to "Corinne," but over the years I've answered to "Corinna," "Carolina," and one year "Maria." It wasn't even close. It's actually pronounced "Carin Campagna."

The Chair: You have 20 minutes. You may begin.

Ms. Campagna: May I begin by stating that I am a paralegal, not a lawyer. I appreciate this opportunity to speak before the standing committee today. My name is Carin Campagna. I'm an honours graduate of Seneca College's court and tribunal program, with a certificate in alternative dispute resolution. I have recently opened an office with a colleague of mine to assist the community in Small Claims Court matters. I support the regulation of paralegals, but I do not agree that the Law Society of Upper Canada is the appropriate body to mandate this proposal.

Bill 14 will not only dictate the future of the paralegal profession but it will dictate whether or not the average person, with an average income, is able to file a defence or commence a legal action in Ontario because Bill 14 has provided him with increased access to justice. People are retaining paralegals as an alternative to lawyers more frequently than ever. They are not confused about the difference. They seek us out. They are frustrated with the cost of lawyers versus the quality of the services provided. This frustration is reflected in the magnitude of malpractice lawsuits filed each year against lawyers.

This is about ethics, but this is also about money. Statistics Canada reported in 2004 that there are 3.5 million Canadians living within the low-income cut-off line, 40% being single parents and 865,000 people in this community being children under the age of 18. Family Court has been deprived of legal aid since about 2002. Consequently, women and children have been adversely affected. Mothers unable to afford representation are losing their children in custody battles or giving up valid legal rights to child support. Violence and emergencies are the only avenues left that provide eligibility and access to counsel. How will Bill 14 provide the vulnerable and the underprivileged with increased access to justice?

While my current office operates in the heart of the Greek community, I have had the opportunity to assist a lot of the residents in Little Portugal. Some would come by with parking tickets, rent discrepancies or the ever-popular 403 bill disputes. Others would come in with correspondence from their banking institutions or letters from the Family Responsibility Office that they couldn't understand or respond to. I would respond. One gentleman was penalized over \$2,400 for failing to report his

earnings to EI. Supporting documents and a few phone calls soon had that rectified and the penalty was reversed; everyday issues that I as a paralegal was happy to address—affordable, reasonable and resolved.

We as paralegals help those who are struggling to raise their families on \$12 an hour and cannot afford a lawyer's fee. Those in the ethnic community whose English skills prevent them from defending themselves or those who need a voice at court regardless of whether their case is considered financially viable or not—we help them all.

The recommendations mandated by the task force will effectively eliminate many paralegals who cannot afford to satisfy the catalogue of recommended fees, including, but not limited to, licensing fees, insurance fees and a compensation fund. Additional paralegals may be eliminated by the degree of difficulty in passing the licensing requirement itself. Who will dictate its contents, standard of complexity and cost requirements to pass? This bill will have an immeasurable negative effect on the underprivileged public sector that cannot afford a lawyer by further reducing their access to justice should the paralegal community be abridged.

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In 1998, Mr. Malcolm Heins, who was then president of the insurer for the Law Society of Upper Canada and its members, stood before a standing committee and addressed his concerns for the quantity of claims filed each year against lawyers and the \$75 million a year it cost the insurers to resolve these claims. In the previous nine years, he reported that the insurers had paid out \$675 million in malpractice lawsuits. Mr. Heins is now the CEO of the law society, and he stated in the March 2006 issue of the *Lawyers Weekly* that he is "confident that the law society will be able to manage effectively" with the inclusion of paralegals.

Eight years ago, this same gentleman expressed concerns with issues of lawyers' competence, standards of practice, quality of legal services and the claims' negative impact on the public and the profession. It is apparent that the public's confidence in the legal community has not improved in the years since, as reflected in the 7,470 complaints filed against lawyers in 2003, a 19% increase over 2002. In June 2006, in an extended effort to monitor new lawyers, the law society expanded its practice review program.

Given the caseload associated with increased complaints against lawyers, year after year, how does the law society intend to assume the additional role as the regulatory body for Bill 14? Why should the paralegal community have any more confidence in the law society than the general public and communities at large? How does it propose to effectively manage the future of paralegals when it clearly cannot manage its own?

Furthermore, I do not believe the law society to be the appropriate body to regulate the paralegal profession because of the transparent conflict of interest. It is the lawyers—from Justice Cory's report in 2000 to the Ontario Trial Lawyers Association's submissions in 2004

and the Ontario Bar Association's consultation paper in February 2006—who will dictate the rules, regulations and restrictions imposed on paralegals. The professional conflict of interest between paralegals and lawyers will be further augmented with the pending jurisdictional increase in Small Claims Court. This bill demands that an impartial regulatory body would better serve the public by monitoring any anti-competitive behaviour from the lawyers through bills or otherwise and addressing public concerns or complaints objectively.

If the purpose of this bill is to establish a paralegals' code of conduct and a regulatory body to address the public's complaint against a paralegal, how will this complaint translate? It probably means he is applying for compensation for services not rendered or rendered with an unsatisfactory outcome. Essentially, he wants some or all of his money back. He doesn't need Bill 14 to do this. He takes the paralegal to court, just as you would have a lawyer taxed should you feel that his fees were unreasonable or unjustified.

I had the opportunity to assist a client in a complaint filed against a lawyer in 2003. We were successful. The law society determined after an investigation of his practices that he had behaved unethically and that his conduct was questionable. His reprimand was fundamentally a slap on the wrist and his name put in some sort of a black book. Regarding the fee dispute, my client had to retain a lawyer and file an action at court costing an additional \$8,000 in legal fees to have this matter resolved in his favour, the point being, if you have a complaint of competency or negligence and you demand compensation, you don't go to the ethics committee; you'll have to file a claim. The public cannot be misled into overestimating the authority of this regulatory body.

In conclusion, I thank you for your time and ask for your support in my move for an independent body, held by paralegals, nominated by paralegals and perhaps monitored by the Attorney General. This is how I believe the paralegal profession will be directed successfully into the future for the benefit of those who need it most.

The Chair: Thank you. About three minutes for each side. Mr. Kormos.

Mr. Kormos: Thank you, Ms. Campagna. I say to the parliamentary assistant to the Attorney General, Mr. Zimmer over there, that if the government can't come up with some paralegals who support this proposal, then the legitimacy of the proposal remains very much in question. So far, all we've heard from paralegals, established ones, long-time ones, is that they support regulation but are concerned about the scheme proposed by the government. Is that a fair observation, Ms. Campagna?

Ms. Campagna: Yes, it is a fair observation.

Mr. Kormos: I wanted to add one more thing, because that's one argument you've got, that it's unfair to have lawyers regulating paralegals, that paralegals are quite capable of regulating themselves, and, as I say, we haven't heard from any paralegals who disagree with you yet. The other position you seem to take is that the law society has done a crappy job of regulating lawyers, so

why would we count on it to regulate paralegals? Is that a fair interpretation of your comments? You might not have used that language. You didn't.

Ms. Campagna: It's a fair enough observation. It just appears to me that the law society has had its hands full, and I don't know if it could take on at this time any further responsibilities. As mentioned by Mr. John Wilkinson in February, during second reading, "It's a bill that only a lawyer could love." So I do have my concerns with comments like that. And he repeated it, saying, "Only a lawyer could love this bill." Are you here today?

Mr. Chudleigh: Mr. Zimmer loves this bill.

Mr. Kormos: That's your John Wilkinson.

Ms. Campagna: Just an observation from the second reading. I'm not taking it out of context. That's actually what was said.

Mr. Kormos: Thank you, Ms. Campagna.

Ms. Campagna: Thank you very much.

Mr. Kormos: No, we've got more.

Ms. Campagna: Oh, we have more.

The Chair: Mr. Zimmer?

Mr. Zimmer: Thank you for your presentation and thank you for the very good and capable work you do in your community.

Ms. Campagna: Thank you very much.

The Chair: Mr. Chudleigh.

Mr. Chudleigh: Beating up lawyers is almost as much fun as beating up politicians. It strikes me that we're surrounded by lawyers at this table. Mr. Kormos is a lawyer; Mr. Zimmer is a lawyer.

Mr. Zimmer: I make that two out of seven.

Mr. Chudleigh: Two out of seven. I'm just wondering—

Mr. Kormos: But at 3 o'clock in the morning when the cops are hanging on your door, you're going to call one of us, aren't you?

Mr. Chudleigh: No, I'm going to call the chief. I think I'd call the chief. However—

Interjections.

Mr. Chudleigh: I'm in opposition; I can call the chief.

I just wonder if there's not a conflict of interest with lawyers sitting on this committee and making decisions concerning whether paralegals are rightfully represented by the Law Society of Upper Canada. I'm wondering, Mr. Chair, if we should adjourn this hearing until we can get a ruling on that from the Integrity Commissioner.

Ms. Campagna: I would like a better balance to be heard. I'd like a nicer balance.

Mr. Chudleigh: There's not one paralegal on this committee. I think it's—

Mr. Zimmer: But the Integrity Commissioner is a lawyer.

Mr. Chudleigh: He doesn't sit on this committee. I'm quite serious. I wonder if we're doing the right thing, if we don't have some conflicts of interest sitting around this table.

Mr. Kormos: I'd suggest that's a point of order the Chair has to consider. I'm sure Mr. Zimmer agrees with

me that we want to pursue this matter with clean hands, so I would support the proposal that the matter be put to the Integrity Commissioner and that these committee hearings—if it's a matter of integrity, Mr. Zimmer, surely you want to have the seal of approval.

Mr. Zimmer: Mr. McMeekin, a non-lawyer, is going to speak.

Mr. McMeekin: Mr. Chairman, I don't think anybody in this room who knows Mr. Kormos or Mr. Zimmer would for one millisecond question their integrity when it comes to this sort of issue—

Mr. Kormos: As compared to any other?

Mr. McMeekin:—any more than we would question the right of somebody with legal training to put their name forward to stand for public office. The same kind of argument could be made.

I think Mr. Kormos and Mr. Zimmer are first and foremost here to take care of the public interest, not to represent some narrow, partisan professional bias. That's my suggestion. There may be colleagues here who think otherwise, and shame on them if that's how they really feel.

Mr. Kormos: I find that a remarkable comment from Mr. McMeekin, when on other occasions he's been far more scathing about my ability to be fair-minded and independent.

Mr. McMeekin: Never scathing. Never.

Mr. Chudleigh: Mr. McMeekin has mentioned that there's been no one in this room—I wonder if we could survey the room. There seem to be a number of paralegals here, and I'm suggesting that they're the people who are being aggrieved by this process. Perhaps one of them would like to express an opinion as to whether the lawyers on this committee are sitting in conflict of interest or not.

Mr. Kormos: Chair, let's just clear the air and let the Integrity Commissioner deal with this.

The Chair: We'll take that under advisement. I think Mr. Zimmer is here not as a lawyer, but as a parliamentary assistant. We'll take that under advisement, and considering the next person isn't here, we'll recess for lunch until 1:30.

Mr. Chudleigh: And will you seek a ruling from the Integrity Commissioner on this issue?

The Chair: We'll seek a ruling on this.

Mr. Chudleigh: Thank you very much.

Ms. Campagna: Could I just clarify that you'd be seeking a ruling from the Integrity Commissioner today, sir? When would that be?

Mr. Kormos: It could take weeks.

The Chair: We don't know—

Ms. Campagna: It could take weeks?

The Chair: It may not be the Integrity Commissioner, but we will seek further information on that. Thank you. This committee is recessed until 1:30.

The committee recessed from 1132 to 1333.

The Chair: Good afternoon, everybody. We're resuming our meeting here this afternoon. First, I want to

address Mr. Chudleigh's concern about the conflict of interest. I'll just read this out here:

"Members indicating a conflict:

"It is not the responsibility of the committee, committee Chair or committee clerk to determine whether a conflict of interest exists. Members with a possible conflict of interest or a belief that one may exist for another member should seek the advice of the Integrity Commissioner, as outlined in the Members' Integrity Act."

That being said, I'd like to state the following quote from the Members' Integrity Act:

"Conflict of interest

"2. A member of the assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest."

For the record, the definition of "private interest" is set out in section 1 of the act as follows:

"'Private interest' does not include an interest in a decision,

"(a) that is of general application,

"(b)"—which is the important part here—"that affects a member of the assembly as one of a broad class of persons, or

"(c) that concerns the remuneration or benefits of a member or of an officer or employee of the Assembly."

Having said that, I hope that addresses Mr. Chudleigh's concern. Mr. Kormos?

Mr. Kormos: I'm sorry, but it doesn't. In fact, it further muddies the water. Mr. Zimmer, Ms. Elliott, the Conservative member of this committee and colleague of Mr. Chudleigh's, and I of course are lawyers. Although I don't currently practise law and haven't since 1990, I am a member in good standing of the law society. Mr. Zimmer indicated that he was as well, and I'm confident Ms. Elliott is too. I haven't seen her name in the back page of the ORs—I don't think I've seen it ever. Mine showed up from time to time over the course of the years for late payment of fees, but that's a different story.

You create a problem now. I suggested to you that Mr. Chudleigh's unfortunate intervention was a point of order. If you agree that it was a point of order, it leaves it to you to determine whether or not it was in order.

Now you raise a red flag. You say that it is incumbent upon members to seek the counsel of the Integrity Commissioner. That is certainly how I hear your comments as Chair. You then create a serious problem. You're the Chair, and we—

Mr. Zimmer: I'm a bit late. Where are we?

Mr. Kormos: We're in a little bit of hot water, Mr. Zimmer, because of the ruling the Chair made.

Mr. Zimmer: Which was?

Interjection.

Mr. Kormos: That's precisely the point. I suggested to you that Mr. Chudleigh was making a point of order. If it was a point of order, it's for you to determine whether

or not it was a valid point of order. Rather than determining whether or not it was a valid point of order, you go to the extraordinary length of reminding us of our responsibilities under the Members' Integrity Act.

Mr. Zimmer: May I just ask the Chair to read back so I just know what—

Mr. Kormos: You want to compound this?

Mr. Zimmer: I want to have the context of the—

Mr. Kormos: Be careful what you wish for.

The Chair: Thank you very much, Mr. Kormos. The ruling was that it's not up to me as a Chair or the committee to determine if there's a conflict of interest. That is a ruling.

Mr. McMeekin?

Mr. McMeekin: I just want to say that my understanding of the rules, in particular around integrity, is that it's up to each individual member to determine whether or not they are in conflict. If Mr. Kormos, for example, believed he was in conflict as a result of the earlier discussion, he'd be not only entirely in order but would be morally required to recuse himself from the session.

Mr. Kormos: Do I have the floor or not, Chair?

Mr. McMeekin: So the way—the way—

Mr. Kormos: What's going on here? I don't need lessons in morality from a Liberal.

Mr. McMeekin: No, no. I'm not giving anybody a lesson. I'm just commenting on what my understanding of the process is. If anybody feels they have a conflict—I think this is what you were saying—

The Chair: Absolutely.

Mr. McMeekin: —it's up to them to determine it and to declare it. In the absence of that, we assume there's no conflict.

The Chair: Mr. Kormos?

Mr. Kormos: No. Okay. See, I don't need instructions, in my morality, in the Members' Integrity Act, from Liberals. The problem is that Mr. Chudleigh raised a concern. He raised it to you. Mr. Zimmer and I were very candid in acknowledging that we were members in good standing with the law society.

Mr. Chudleigh, the Conservative, very, very adamantly criticized the presence of lawyers on this committee, indicating that it was a conflict of interest, in his view. Mr. Chudleigh is not here this afternoon—I don't understand why, because one would have thought that he would have wanted to follow through on the strong ground he took this morning.

Your response, which is to cite the Members' Integrity Act, rather than to dismiss with no further comment Mr. Chudleigh's point, then puts people in the interesting position of—because you've talked about the need for members to inquire of the Integrity Commissioner whether or not we are in violation of any standard. Surely if Mr. Chudleigh was out of order, and the Chair had no further interest in the matter and saw no validity to the observations Mr. Chudleigh made, it would be incumbent on the Chair to merely say that, rather than carrying it on with citing the Members' Integrity Act. So, again, this is problematic.

I would invite the Chair to merely indicate that Mr. Chudleigh, dare I say it, was so far in left field—no, I won't give him that much credit—was so far out of the ballpark that it had no merit and was of no interest to the Chair. By going further and purporting to remind members of their obligations, you are equivocal in your response. That causes me some concern, because far be it from me to want any of these folks to think that an experienced member like Mr. Chudleigh could have had some basis for his concern about Mrs. Elliott being a lawyer, and his dismissiveness of her, his own colleague, by inference; and Mr. Tory being a lawyer, and, by inference, his dismissiveness of his own leader. Good grief, Joe Tascona, then, I suppose, wouldn't be able to sit on this committee either, or any other number of people. So I really need some direction, I need your help, since you've waded into this. Throw us a life ring.

The Chair: Thank you, Mr. Kormos. What I stated was, it's not my position—it's not for me to decide whether it's a conflict of interest. I can't validate Mr. Chudleigh's concern. He can pose any question, and there may be something that I can't address. So that's the ruling, and I suggest we move on with our next presenter this afternoon, as I see no benefit to your argument. If you feel, or anyone else feels, that there's a conflict, it's there; everyone knows. I just repeated it for the record. I don't see what the issue is here.

Interjections.

The Chair: I don't think that's the case. I think we'd be better using our time if we moved on with today's meeting.

Mr. Zimmer: On a point of order, Mr. Chair: May I just have a hard copy of the ruling?

The Chair: Absolutely. We'll get copies for you.

Mr. Zimmer: Can I just—just while you're making copies?

The Chair: Okay, we'll move on.

Mr. Kormos: On a point of order, Mr. Chair: I suppose the Chair might have simply said that Mr. Chudleigh was out of order by imputing motive, contrary to the standing orders which apply here.

Mr. Zimmer: On a point of order, Mr. Chair: I'm asking for a five-minute recess. I need a hard copy of the ruling. I've just read it, and I need five minutes.

The Chair: I've said it many times. The ruling was that I can't rule on that. Do we—

Mr. Zimmer: A five-minute recess.

The Chair: A five-minute recess? Okay.

The committee recessed from 1344 to 1406.

The Chair: This committee is called back to order.

Mr. Kormos: Chair, with apologies to people who are here to make presentations this afternoon, I'm asking for unanimous consent that this committee adjourn until tomorrow morning at 9 a.m.

The Chair: Is there unanimous consent? Agreed. We're adjourned until tomorrow morning at 9 a.m.

The committee adjourned at 1407.

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STANDING COMMITTEE ON JUSTICE POLICY

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Official Report of Debates (Hansard)

Wednesday 6 September 2006

Journal des débats (Hansard)

Mercredi 6 septembre 2006

**Standing committee on
justice policy**

Access to Justice Act, 2006

**Comité permanent
de la justice**

Loi de 2006
sur l'accès à la justice



Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 6 September 2006

Mercredi 6 septembre 2006

The committee met at 0918 in room 228.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006
SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning, everybody. We're back for the committee hearings on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006. Our first presenter today—Mr. Zimmer?

Mr. David Zimmer (Willowdale): Mr. Chair, if I might speak to a matter on a point of order; indeed, a matter of personal privilege?

The Chair: Go ahead, Mr. Zimmer.

Mr. Zimmer: I want to say to this committee that yesterday just before the noon recess, Mr. Chudleigh, the member for Halton and a member of this committee, raised the spectre—the suggestion, if not the allegation—that lawyers sitting on this committee had a conflict of interest and, in his view, should not be sitting on this committee dealing with Bill 14, the Access to Justice Act, particularly that portion of the act that deals with the regulation of paralegals. I reviewed Hansard, and he made quite strong statements attacking the integrity of the lawyers sitting on this committee and repeating his view that there was a conflict of interest and that we should step off the committee.

I sought a ruling of the Integrity Commissioner, Mr. Coulter Osborne, yesterday afternoon on this issue. I received his ruling last night at about 10 o'clock, and I have a copy here which I intend to table. The ruling says, in effect:

“Dear Mr. Zimmer:

“You have sought an opinion—“

The Chair: Do you have copies of that, Mr. Zimmer?

Mr. Zimmer: Yes. I'm not going to get into the entire ruling but just summarize a part of it.

“Dear Mr. Zimmer:

“You have sought an opinion as to the propriety of you continuing to sit as a member of the standing com-

mittee on justice policy which is presently reviewing Bill 14 ... a portion of which relates to the regulation of paralegals....”

Then he quotes various sections from the Members' Integrity Act and he offers this opinion in three short sentences:

“As noted above, matters of 'general application' are excluded from the definition of private interest.

“Further to that definition it has been held by this office that teachers on a leave of absence may participate and vote on matters of general application having to do with teachers. The same has been held with respect to farmers who continue to farm.

“Lawyers have frequently been members of the standing committee on justice policy I assume because legal practitioners are generally familiar with justice-related issues, just as farmers are often members of a committee reviewing agricultural issues.

“In my opinion the fact that you are a non-practising member of the Law Society of Upper Canada does not give rise to a conflict of interest based upon any reasonable assessment of private interest and public duty. You should, however, declare at the outset of your next committee hearing, your status as a non-practising member of the Law Society of Upper Canada, if that has not already been done.

“I trust the above is of assistance to you.

“Yours very truly.”

It's signed Coulter Osborne, Integrity Commissioner of Ontario.

Mr. Chair, I have to say that yesterday's unwarranted, frivolous, vexatious attack on the integrity of the lawyer members of this committee is, in my view, personally offensive to me. I think it's offensive to the members of this committee. I think it's offensive to the Legislature.

We all knew, as a matter of common sense, just what the Integrity Commissioner has told us. We already knew that. Mr. Chudleigh, the member for Halton, knows that. I understand Mr. Chudleigh's background to be in the agricultural business. Indeed, the Integrity Commissioner makes use of a comparison to farmer members of the Ontario Legislature sitting on committees dealing in a general way with agricultural matters. We all knew that, as a matter of common sense. Mr. Chudleigh knew that.

I can only assume that his attack was a deliberate attempt to derail and to disrupt the proceedings of this committee, which it did for half a day. The people who

suffered—members sitting on this committee and staff from the legislative offices have been inconvenienced, but that's not the real harm. The real harm is all of those people who were sitting there in the body of this committee room waiting for their opportunity to be heard on some very important issues. Those people prepared thoughtfully. They prepared written documentation. They took time out of their schedule. They rearranged their afternoons. If they do want to come back, they're going to have to rearrange their schedules to come back here. This committee is going to have to structure its hearing schedule such that we can accommodate them. And to what end? To satisfy Mr. Chudleigh's goal or intent to disrupt this committee, to cause a lot of fuss and flurry.

Interestingly, not only did he impugn my integrity as a lawyer member of this committee and that of Mr. Kormos, the NDP representative and a lawyer on this committee, but in my view he attacked the integrity of his own caucus colleague who is a lawyer, Mrs. Elliott, a member of this committee and the member for Whitby-Ajax.

This is just an example of irresponsible conduct of a member who's gone off on a personal toot, for whatever possible reasons. I'm reminded that yesterday was the first day of kids returning to school in Ontario. When the kids go back to school, one of the big lessons they're reminded of by their parents on the weekend before they go back and indeed when they arrive in the classroom is, "Don't be a bully." Well, on the first day of the fall schedule, yesterday, the first day of school, Mr. Chudleigh was bullying this committee; he was bullying the lawyer members of this committee. He should be ashamed of himself.

The Chair: Mr. Kormos?

Mr. Peter Kormos (Niagara Centre): Further to that, I'm not going to be anywhere near as generous or temperate in my comments as Mr. Zimmer was undoubtedly compelled to be as parliamentary assistant to the Attorney General. That puts him into a role and gives him a status that requires him to perhaps be more cautious in how he responds to these sorts of things.

I appreciate Mr. Zimmer having sought the counsel of the Integrity Commissioner. I had no intention of seeking the counsel of the Integrity Commissioner or inquiring as to whether or not I was in a conflict of interest. After 18 years here, prior to that as a municipal elected member, I'm well aware what "conflict of interest" means—well aware. If I had a conflict of interest, I would have declared it and would have done so in a timely way well in advance of the commencement of any committee hearings or well in advance of the voting on any matter.

Mr. Chudleigh's conduct was, in my respectful view, scurrilous. It was beyond irresponsible. I do not credit Mr. Chudleigh, as Mr. Zimmer does, with having had an agenda of attempting to derail this committee. From time to time over my years here, I've derailed a few legislative processes, and I say that with great pride as a member of the opposition. From time to time, that's our job. I believe that Mr. Chudleigh had no understanding whatso-

ever of the impact of his comments, which went, in my view, far beyond mere partisan sparring, because what they did in effect was charge members of this committee, including his own colleague Mrs. Elliott, with a violation of the Members' Integrity Act. That goes far beyond suggesting any inherent bias towards one point of view as compared to another. Of course we have biases. Liberals are Liberals; Conservatives are Conservatives; New Democrats are New Democrats. Our ideological perspectives inherently give us bias, and I say that's a good thing. I happen to believe that ideology has an important role to play in politics.

But I apologize to yesterday's presenters who were prevented from making their presentations in the afternoon. As I indicated to them yesterday, and I'm confident I spoke on behalf of every member of this committee, this committee and subcommittee will meet and ensure that they have access to this committee. But I just find it reprehensible that a person who has been in this Legislature for some time now, Mr. Chudleigh, could make such stupid comments, not being aware or sensitive to the consequences of those comments or the need for the air to be cleared before this committee could continue. As I say, I don't think he made them with the intention of derailing the legislation. I'm not sure he spoke for the Conservative caucus. Mr. Tory will let us know that in due course, I'm sure—Mr. Tory as a lawyer.

0930

I further want to say this: I've told many a lawyer joke; I know them all. And quite frankly, if anybody is going to tell lawyer jokes, it'll be me, not Mr. Chudleigh. As I said to Mr. Chudleigh yesterday, when the cops are banging on his door at 3 a.m. wanting to seize his computer, he's going to be calling a lawyer; not, as he suggested, the chief of police. Trust me, if the cops are banging on his door at 3 in the morning, the chief of police authorized it. I thank you, Chair.

The Chair: Thank you, Mr. Kormos. Mrs. Elliott?

Mrs. Christine Elliott (Whitby-Ajax): Mr. Chair, if I may make a few comments. I'm not able to comment specifically on the remarks that were made by Mr. Chudleigh yesterday because, unfortunately, I was not able to be here and he was substituting for me. It was the first day of school and I was required to be there to register one of my children.

Having said that, I can only say that I doubt very much that Mr. Chudleigh meant to personally insult the members of this committee who are lawyers. I don't think that was his intention at all. However, we are now in a position of having to seek the opinion of the Integrity Commissioner with respect to our ability to carry on as members of this committee.

As Mr. Kormos has indicated, I too am very familiar, and Mr. Zimmer is as well, with the conflict of interest rules and the requirement that we seek the opinion of the Integrity Commissioner in circumstances where we're uncertain whether we have a conflict. In this case, I too was very sure that I did not have a conflict; however, as with the other members who are lawyers, I did submit a

request to the Integrity Commissioner to advise me whether in his opinion he felt there was a conflict.

I've also received a letter from the Integrity Commissioner. My situation is slightly different from Mr. Zimmer's and Mr. Kormos's in that I have continued to practice law part time since the election, and I've done that in order to complete my law practice and to fulfill my obligations to my pre-existing clients. I do not intend to continue to practice law. I'm not taking on any new clients. But I think that is something that makes my situation slightly different. I just feel it's important to disclose that to this committee, and that is commented on by Mr. Justice Osborne in his letter to me. However, he has concluded that in his view he also does not believe that's a conflict. So if I may submit that also, Mr. Chair, for the record. Thank you.

The Chair: Thank you.

Mr. Zimmer: Mr. Chair, did I give you a copy of my letter?

The Chair: Yes.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Mr. Chair, in view of all the things that have happened, as was stated earlier, our participants of yesterday afternoon have been greatly inconvenienced and I would ask that the Chair and clerk, and anyone who could help us, make sure those people are accommodated in the best way possible. I know that on the agenda there are time slots coming up where things have not been confirmed. If they aren't confirmed, can we make every effort to allow some of these people to come back in those particular time slots and try to recover as much as we can from what happened yesterday?

The Chair: Thank you, Mrs. Van Bommel. We'll definitely make sure that the people who had to leave yesterday afternoon—I know some of them came from as far as Burlington and Brampton, so we'll make sure they are accommodated.

Mrs. Van Bommel: Thank you.

SHAWN TEDDER

The Chair: We can now start. Our first presentation is from Shawn Tedder, separation equals equal parenting. Good morning, sir. Sorry about the delay. You have 30 minutes, and you may begin.

Mr. Shawn Tedder: Oh, my goodness. Okay. Hi, I'm Shawn Tedder. I'm a self-represented father. Just a very brief history; I won't go into the gory details too much. In March, I came home from a business trip and the house was empty. My wife had basically got an ex parte order to take the children and move about three blocks away, so that started my process in the justice system. I had never been before the justice system for family law and I was a virgin at that.

I immediately found out that an ex parte order has to be served. This relates to the judge that I have. They moved the Ontario family courthouse from Eglinton. Those two judges there moved up to Sheppard Avenue East. There were eight judges there. My luck was, I got

the same judge out of 10 judges. I asked her, "Why do I get the same judge?" She said, "Well, it's just the luck of the draw that you get the same judge on an ex parte order."

In this part of the act, I see reference—I go every Wednesday night to fathers-resources.com. Danny Guspie is a law clerk. He's concerned about the paralegal section of it; also Stacy Robb. He passes on his regrets; he can't make it. He's not a paralegal but he does a lot of work for fathers without resources. About 50% or more are self-represented on both sides.

The Chair: Mr. Tedder, can you speak a touch louder? They're having problems picking up your voice.

Mr. Tedder: I'm sorry. Do I go right in here? Is that better, right there? Okay.

The documents that I've submitted to Anne Stokes through e-mails in the last three months—I don't see them on the desk photocopied either. But Kevin Dwyer luckily came in early this morning. He said, "Come in early and we'll photocopy some stuff." These are just the basics. With my research over the last five months, I've found out that hopefully my children and my grandchildren won't have to go through what I or anybody else is going through on both sides of the fence. I'm not coming across as an angry father or an angry husband, I hope, in this discussion.

The other thing that I've noticed about the justice system is that it says right on your front page, "An Act to promote access to justice...." There's nothing in there about how you're going to make it easier for people on lower incomes. If I go to the courthouse, the first thing I'm presented with are documents that I have to fill in. I'm not legally trained; I don't have the finances to pay \$400 an hour for the best family law. I go to the duty counsel. The first question he asked me was, "Do you own a house?" Of course I own a house. I've got mortgage payments, too, but that doesn't mean that I can sell the house just to pay a lawyer.

Legal aid says the same thing, so the next step up is a paralegal. A paralegal might be \$65 to \$100 an hour. A law clerk might be \$135 an hour—I'm quoting prices that I know; that could be an average—and a lawyer could be \$200 to \$400, so how is that access to justice?

The first step I made is, with coaching in the background and spending about \$700, I found out how to fill in the documents. You can download them from the website, thank goodness, and you can fill them in, but I got coaching on how to fill in the documents in point form and be concise instead of rambling on.

When I first introduced myself to the judge, I asked right away, "Can I record these proceedings because I am self-represented?" She was shocked. I didn't ask, actually. I was told to say, "I will be recording these proceedings." This is the device I asked to use. Her comment right away was, "No," and I said, "Well, I have to have a reason why and I have to have a direction why." I have directions here that say, if you refer to—I'm sorry these aren't page-numbered, but about 20 pages down. It's this page here; it's a blurry page. It's a direction from W.G.C.

Howland, Chief Justice of Ontario. Your proposed act says here on page 6, the role and functions of the chief administrator—directions by Chief Justice of Ontario: “The Chief Justice of Ontario may give the chief administrator directions, in relation to the Court of Appeal,” and has the authority basically to supervise the work of the court services and the work of its officers and its employees.

0940

We have here a direction by W.G.C. Howland, Chief Justice of Ontario. As far as I can tell, it hasn't been knocked over. As a matter of fact, on the next page you'll see Hamilton judge—I can't pronounce his last name—a Canada Court Watch report. By the way, you can go to canadacourtwatch.com and you can download a lot of these things. The previous page is downloadable as well in a much better format. It's been photocopied so many times; I apologize. This judge—after seven years of a man going to court, going through all his financial resources, who hadn't seen his children in seven years, I think it says here—was asked finally, “Can I record?” The justice said no, and then he reversed his decision.

Basically, there's a contradiction in here. You have directions by the Chief Justice of Ontario saying that he has the authority to make rules for his officers and his employees—I imagine the judge is an employee—then we have, preceding this—sorry, these aren't page-numbered. I just got this document last week from the judge. On the third page down, she relates to Justice Howland in item number 6. She says, “I point out that this practice direction relates to the Superior Court and moreover that it is at least 16 years old. I am not satisfied that this court is bound by same.”

In the Saturday Star two weeks ago—I was very pleasantly surprised that there's opinion poll testing in the middle of summer, when everybody wants to go to the Ex and have fun or go to the cottage. We're going to open up the courts to videotaping and audio. When I go into the courtroom, we're always fighting about this, taking down the signs about audio recording. At 47 Sheppard, when you go in, between the doors of the two courtrooms—I mean, the courtroom has two doors to keep the sound out—there's a big sign posted there because of what I asked for back in March, a new sign that has been put up saying no video recording, no audio recording, cameras and so on. We've managed to get the Brampton courthouse to take down those signs.

Sorry, these aren't numbered. There's a page here that says “Ministry of the Attorney General.” It's about 15 pages down. I wrote everybody. This is the one kicker that I was very disgusted with in our justice system. The middle paragraph says, “Judicial independence is the cornerstone of our justice system. Although section 136 of the Courts of Justice Act does permit a party acting in person to unobtrusively make an audio recording of the court proceeding, decisions made by members of the judiciary on the day of court are at the discretion of the judicial officer presiding that day.” In other words, you have a direction from a Chief Justice that doesn't work.

I see that this bill also doesn't want to go into anything too dicey. The Family Law Act needs reforming. I'd like to comment that we should open up access to justice for everybody. The biggest comment I have is that in all my studying, the US is trying to open up access with recordings and videotape, as long as there are no witnesses.

When I download videos of Bob Geldof and what he went through with his three children—he's not only an activist for undeveloped countries; he's an activist for equal parenting. There are states in the US that are allowing equal parenting to happen right after separation as long as there are no criminal charges—New Zealand, Australia, Britain, BC, Alberta. We had a mediation lawyer come to our meeting. She was very shocked that we haven't progressed from the adversary situation to going to separation counselling as soon as you separate. The children are going through hell for this, because basically what's happening is their loyalty is pulled both ways. The children's aid gets involved, the police get involved in a lot of cases, the children are interviewed, they're put through a nightmare, as in my case. I've only been to court twice since March, and unfortunately, my spouse works within the system and she knows everything to do. She works for a shelter for battered women and children, so she knows how to coach, she knows how to counsel, and I'm getting everything thrown at me. Now, I'm not the only one. I thought I was the only one, but there were 30 fathers and some second wives—we want to show equality in that—aunts, uncles, mothers, grandmothers come to our meetings, and the stories are just horrendous about what's going on, especially when only 7% of parents get equal access. I don't want to be an every-other-weekend father, so I want more access to the justice system. I also want to see some more teeth to this act in relation to not disallowing paralegals to serve in family law. I think that we have a hard enough time as it is to access representation.

The other point is that this document here—I was told to buy the transcript if I wanted to. I have the charge here: It was \$111.80. This isn't access to justice; this is a rip-off. This is a small, double-spaced document that the court reporter typed up. With my persistence in asking for a recording, I was granted the leave that my next proceeding, and I have to fight each time, would be transcribed for free. Well, what does that do? That just puts more burden on the taxpayer, because they have to produce three copies, one for the judge, one for me, and then the other side said, “Oh, can I have a copy?” And she said, “No, you can't have a copy. He asked for it; you didn't.” I got a two-hour discourse this thick; God knows what the bill would have been for that. But then I asked the court reporter, “How many do you do a day of these transcripts,” that either the judge orders—because most times the judge orders these. She says, “Three to four transcripts a day.” I said, “Wow, that's a lot,” because they sometimes have up to 30 cases a day.

I think that the justice system right now as I view it is a very highly adversary situation and a conflict situation.

I want to see more acts that are human, that basically allow us to interact as people rather than encumber. I went into the Osgoode law library—as the general public, you can go in there up to 6 o'clock. I went into the stacks. I saw that the Family Law Act was this thin 30 years ago. Now the book is this thick, and God forbid I see the size going to three inches or more, because who can afford to even buy that book? If they want to refer to it in a paralegal office or even a law practice, it's getting outrageous.

0950

Self-representing: In the six months I've been going to these meetings, most of them can't afford it or they've gone through thousands of dollars. Some have lost their businesses. Some have had their assets seized or frozen. Sometimes their credit cards are being run up tremendously. This doesn't help the children. It takes away education money. It takes away the assets of the family. Basically, it takes away human dignity, because there are people living out of their cars and their vans or living in shelters. That is not promoting access to justice; that's going the opposite way.

When I download censuses, I find out that one in 10 people are either separated or divorced in most ridings. I think you should listen to your constituents and actively seek out ways to find out what their needs are as well, because they're a growing population. I know the seniors are a growing population, but in most ridings, one in 10 people are divorced or separated, and if you look at the stats from Stats Canada, 2001, you'll see that.

I'm going to leave time for questions if there are any. I've pretty well run out of steam here, but I want to thank you very much for allowing me to come and talk and present that as soon as separation happens, we shouldn't be in an adversarial situation. As long as there are no criminal charges, we should have equal access to our children. We shouldn't be on the other side fighting for access. Forget about the property, forget about all the other stuff; the children should have access to both parents on an equal basis.

The Chair: Thank you very much. We'll begin with Mrs. Elliott. There are about four minutes for each side.

Mrs. Elliott: Thank you for your presentation. I was very interested in your comments with respect to the services and the help that you received from a paralegal. I wonder if you could just expand a little bit more on exactly what they helped you with and what you think they should be allowed to do that would be helpful.

Mr. Tedder: I couldn't afford a paralegal. Let's put it this way: When I searched on the Internet for equal parenting and shared parenting—because that was my goal. My focus is not about property, it's not about fighting about dollars; it's about equal parenting. Right off the bat, I was refused the right to see my children for two months because an ex parte order put restraining orders on until we could go in front of the judge. When I searched on Google and everything, I found two groups. One was Stacy Robb of dadscanada.com, as I mentioned. He has an RV that he pulls in front of University now

and again. Well, he can't afford the plates, so he hasn't pulled in front of University to protest, but he has used that as a shelter. He's not a paralegal. He's not trained. He has been at it for 15 years. He's an ex-truck driver who helps dads fill in the documents and also refers them to lawyers. Another was Danny Guspie. He's a law clerk. He did two years of law clerk. He has been at it for about 15 years as well. He holds meetings. I didn't find a paralegal, so I don't have very good experience with paralegals, but I found the in-between road. I found one who's basically unlicensed. His charges are very reasonable, about \$65 an hour. He helped me with my documents. I spent about \$700, and then I was basically born free. Danny Guspie charged about \$135 an hour. He holds the meetings for free. If people want to see him and make appointments, that's one way to make business as well. He refers them to Joel Miller, I think it is, on Bay Street, who charges about \$400 an hour.

What I was saying is that even the duty counsel—when you go into the courts, you sign your name in, they call you, and their first question is, "Do you own a house?" What has that got to do with me asking a quick question?

Mrs. Elliott: What would you like to see in terms of assistance being provided?

Mr. Tedder: The biggest thing is that access to justice is fine, but I also think we don't have to get into the conflict as much if we have, basically—some of the other provinces have done this, maybe more than BC and Alberta. Right away, as soon as you separate, you are ordered to go together to talk and mediate, whereas in Ontario it's totally the other way around: You have to wait till the case conference, which I haven't even hit yet. I'm going to the children's lawyer. They're going to give us an hour afterwards, where if we both want to talk, we can talk then. If we don't, we can leave the room. In the other case, in BC and Alberta, it makes more sense. Their conflict level has gone down by up to 40%.

The other issue that I forgot to mention—I'm sorry; I don't want to step on your question—just quickly, is that every time I've mentioned shared parenting or equal parenting with the judge, with the children's lawyer and the social worker there, they throw up the stats at me, saying, "Only 7% of parents get shared parenting, and it raises the conflict level." Well, of course it raises the conflict level, because everybody is in an adversarial situation right from the beginning, instead of mediating.

Mr. Kormos: Thank you, Mr. Tedder. Of course, you've corresponded, I think, with everybody. Similarly, others have talked to MPPs around this issue of audio recordings. If you take a look at the judgment, there's one ironic comment with respect to the private recording: "There is no quality control as to equipment. There is only one recording device and it may be some distance away from the parties speaking which could impact on the recording...."

I say to the government members, any number of newspaper reports recently have revealed the notoriously pathetic state of recording in the government's

courtrooms, and the failure of appeals and rulings being overturned because of the completely antiquated equipment and the refusal of the government to ensure that there are an adequate number of court reporters. I just wanted to make that observation in the context of what the judge ruled here.

What you're saying is that separation is very expensive. Separation is incredibly expensive, and people had better understand that, quite frankly. One of the things that just rots my socks is the fact that all parties to these very litigious separations insist that what they're doing is in the best interests of the children. Horse feathers. If parents were really concerned about the best interests of the children, litigation would be their last resort.

So I agree with you that up-front mediation—which is not the practice in Ontario, in the courts—as compared to back-end mediation, would be far more effective. One of the sad realities, though, notwithstanding that our court system incorporates mediation as part of the institutional process, is that they don't pay for it. They make the parties pay for mediation. So impecunious parties, or parties who are already cash-strapped because of high legal fees—that simply adds another burden. And the fact is that back-end mediation is more often than not simply a way of clearing the docket for a crowded court system, where people are more likely to be subtly coerced into settling in a way that isn't to their advantage or isn't to the other party's advantage. So I agree with you. One of the points you make—you may not appreciate it—is the need for front-end mediation and for it to be funded by the government. I say to you that that would be far more effective in resolving some of these very expensive, painful, dangerous—because you've seen some of the consequences of these high-stress, highly emotional, prolonged litigations. It would be far more effective in maintaining the children's interest as paramount. So I appreciate your comments in that respect.

Mr. Tedder: Thank you, Peter.

The Chair: Any comment from the government side?

Mr. Zimmer: No.

The Chair: Thank you, Mr. Tedder.

Mr. Tedder: Thank you very much for a chance to speak before you. Have a very good day. And tell your children and your grandchildren about this also, because if this doesn't change, your children and grandchildren are going to go through this—one in 10.

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BUILDING TRADES WORKERS' SERVICES ASSOCIATION

The Chair: Next we have Tony Hartt from the Building Trades Workers' Services Association.

Good morning. If I can have the other gentleman introduce himself, and you are free to start any time you'd like.

Mr. Eric DePoe: My name is Eric DePoe. I'm a compensation specialist with—

The Chair: Your name again?

Mr. DePoe: Eric DePoe.

The Chair: All right. You may begin.

Mr. Tony Hartt: My name is Tony Hartt and I serve as the administrator of the Building Trades Workers' Services Association. My associate here is Eric DePoe, one of our compensation specialists at Building Trades Workers' Services. You can see his CV in the handout that we sent ahead, and if you didn't get it, the clerk is passing around another copy right now.

We operate in a very narrow spectrum of the paralegal sector. We represent injured unionized construction workers before the compensation board. So our main purpose here today is to introduce our unique not-for-profit association and our role in serving Ontario's unionized construction industry with regard to WSIB issues.

We're certainly pleased to appear before your committee in representation of our place in the paralegal environment. The sent-ahead brief handout identifies our stakeholders and our association. If you didn't get a chance to read it ahead of time, our association is owned and operated currently by 49 local unions. These unions represent tens of thousands of construction workers and some other trades.

Our intent today is to ensure that committee members are aware of our organization and our business model as you deliberate over appropriate action to implement Bill 14, ensuring that Ontarians do secure access to justice.

I'd like to turn it over to Eric for a bit to just cover some of the key points in our handout. So take it away, Eric.

Mr. DePoe: Good morning. I just want to review some of the most important points we wanted to make here today. Our Building Trades Workers' Services Association was formed in 1994 and subsequently was incorporated in Ontario in 1998. So we've been going for 12 years. The association was founded and is owned, as Tony said, co-operatively by its member local unions. Some provincial labour associations are part of that mix. Those local unions you have in your materials.

Building Trades is a duly enacted corporation. We have a board of governors elected from delegates from our member organizations. According to our corporate bylaws, we have an annual meeting, and that meeting provides oversight of our organization and the services we provide to the members of those local unions and provincial labour associations.

Our home office is in Toronto. We have four full-time specialists who provide representation to the members of those local unions. We also employ expertise from the outside as required, including medical, legal or other support services in our provision of representation to our clients. We also carry insurance—general liability and errors and omissions insurance—just to make sure that there are resources to back us up in providing that representation.

Our staff is highly skilled and has long experience in dealing with the Workplace Safety and Insurance Board

and the Workplace Safety and Insurance Appeals Tribunal. We practise solely in the area of workers' compensation. We also deal with provincial boards in other provinces, representing members who have worked and have been injured in those provinces as well, but our main practice is with Ontario workers and Ontario injuries. We have no interest in, and we don't have a mandate—our bylaws don't give us a mandate—to practise in other areas and to represent anybody in any matters other than workers' compensation matters. So that's our area of expertise and our sole area of interest. We provide services right across the province, mostly in the GTA, but also Thunder Bay, Ottawa—all the major centres where construction unions exist and where workers get injured.

A very important aspect of our service is that we do not bill individual injured workers for our services. Our services are paid for by the local unions. Operating costs are passed on to the locals on a current-usage basis using a fee-for-service type of model, so we share out our costs according to the use that the various locals make of our services.

I'll turn things back to Tony now to sum up.

Mr. Hartt: Eric was speaking as one of those skilled workers of our organization; Eric described them as highly skilled, so Eric is one of four. All of the CVs are written there. You can see there's quite a range of length of service.

We'd like you to know that the Building Trades Workers' Services Association does support the intent of the concepts espoused pertaining to the paralegal section under the proposed Bill 14. I confess we are a bit uneasy when you start to talk about it coming under the law society; there's a natural uneasiness out here with the paralegals about that. After reading carefully, we do believe that if the principles as outlined in 4.2 are applied, the resultant accountability will reflect better service to the people of Ontario.

We're really interested in ensuring that you recognize our service model, which is that of a co-operatively owned not-for-profit corporation that currently does employ, and plans to continue to employ, two or more practitioners for the purpose of representation of injured workers in matters before the WSIB. We're quite interested in calling out the scope of our work, because we don't actually see, reading through the material, any intent to provide any type of, say, graduated licence, if there is licensing. If paralegals are going to take some paralegal course, one assumes, then, that they're going to be required to be exposed to immigration, traffic court or other material. We only practise in the one arena, the narrow spectrum of matters that involve workmen's compensation. We know we have graduated driver's licences—we're just throwing out a concept—and when you're looking at this whole thing, if you'll consider our model.

We're quite amenable to educational or experiential requirements for paralegals in the workmen's compensation area. We actually are actively pursuing

professional and personal updates for all of our people on a continuous basis. They do follow an upgrading program as part of their daily work.

We're not presently, nor are we contemplating, providing services involving other areas of the paralegal spectrum. As an organization with 12 years' experience in its field, we request, at the very least, that grandfathering provisions be inclusive of our association and our specialist personnel.

It's possible, depending on how you read the material, I suppose, that we may be considered grandfathered. We have a copy of a letter to Wayne Samuelson, the president of the OFL, from Malcolm Heins of the law society with regard to paralegal regulation. In his letter, dated March 28, 2006, the key paragraph is, "I can assure you that the law society has no intention to regulate the activities that trade union representatives engage in, as described in your letter."

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So, as described in Wayne Samuelson's letter, you may not think of us, and that's why we actually asked to come here today. We very much appreciate the opportunity. I said to Eric, "Let's keep it short. Let's respect the folks' time and let's allow them to ask all the questions they want." So we're ready for questions.

The Vice-Chair (Mrs. Maria Van Bommel): Thank you, gentlemen. We have about 20 minutes left, so about seven minutes. Mr. Kormos, you have the lead in this rotation.

Mr. Kormos: Thank you, brothers. I appreciate you coming. I'm well aware of the work you do. I suspect some of the other members are too, and it's incredibly important that your concerns—and they're basically addressing the section of schedule C of the bill that deals with the definition of "legal services." There's no two ways about it: The work that advocates for injured workers do is well within the scope of that definition. I appreciate Mr. Heins's letter to Brother Samuelson, but that's all it is, a letter from Mr. Heins, because, at the end of the day, it's not Mr. Heins's call, is it?

Mr. Hartt: That's correct.

Mr. Kormos: The role that unions perform with respect to advocacy for injured workers is incredibly important, inevitably work that lawyers are neither equipped nor inclined to do and certainly don't have the skill, the background and the history. So, fair enough, the advocacy that trade unions provide of course, as the Office of the Worker Adviser is seriously underfunded and understaffed because it has been allowed to be gutted, and the waiting lists at the Office of the Worker Adviser—which is what causes me concern about this government's wacky proposal for eliminating the Human Rights Commission—are not just months but years. What about organizations like injured workers' organizations who similarly provide some of the most skilled advocacy for injured workers that this province ever sees? They're not staff of trade unions. More often than not, they're volunteers. They are funded on the basis of fundraising

or the occasional grant. We don't have that kind of letter from Mr. Heins about them, do we?

Grandfathering is one thing—I should say “grandparenting.” Far be it from me to lapse into political incorrectness.

Mr. Hartt: I stand corrected, sir.

Mr. Kormos: I was concerned about myself, not about you. But what about future persons who will be pursuing these roles, because they come out of the trade union movement more often than not, don't they? They're either injured workers themselves or people who had roles as stewards and leadership roles in their respective unions, where they acquired these advocacy skills. We don't have those assurances either.

I think it's incredibly irresponsible for the Legislature to delegate to the law society who's going to be exempted and who's not. That should be done here, now, publicly in the open, so that everybody knows what's going on. Hell, why even bother sitting? We could do that with each and every bit of legislation: simply pass it off so it can be done behind closed doors. Your point is going to be a recurrent theme. The government could deal with it here and now.

I said this yesterday, Mr. Zimmer: Come forward with an amendment to the bill which will clarify these concerns. We know what the intention is. The intention is to legislate paralegals, not skilled people doing advocacy in any other number of areas where they're incredibly proficient. Come forward with amendments now so we don't waste these people's time. They've got injured workers, and there are a whole lot of them out there who need advocacy. These people could be in their offices taking care of them instead of being here waiting in a line-up to make submissions.

Will the government please address this issue now? There's nothing wrong with that. Come forward, put the amendment on the table. These people can rest assured that they're not going to be victims of some oversight on the part of the law society at the end of the day. The law society will claim it doesn't make mistakes. I'd suggest that everybody makes mistakes from time to time.

This could be cleared up here and now with the government putting forward an amendment, don't you think?

Mr. DePoe: We would like to see it cleared up. Certainly, what we would like most is to be left to continue providing the services that we provide now without any impediments.

Mr. Kormos: Exactly. Like the guy on that cooking show says, it's not rocket science. Thank you, gentlemen.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Brothers, I also want to thank you for coming in today. My uncle, Charlie Hewitt, was head of the plumbers and pipefitters union for a long time and a second father to me as I was growing up. He used to tell me about the four things in life that were important: You had to be able to play chess, appreciate education, be a good ballroom dancer, but he said the fourth and most important was always to stand in solidarity with my

brothers and sisters in the labour movement. So I want to just thank you. I know about your good work—

Mr. Kormos: Could he play the pipes?

Mr. McMeekin: He could play the bagpipes and he was good.

I know about your good work. You're a very responsible, friendly model. It's a good model. It's a model that we applaud. I note with some considerable interest and appreciation the law society's comments that they too consider you a responsible, friendly, good model. I think that's where we're coming from as a government. We're certainly going to consider some of the suggestions that are made about perhaps clearing things up, but we're not sure just where that's going to go. That's why we have public hearings. So I just want to thank you on behalf of the government for coming in. I applaud the good work you're doing. I know a lot about workers' compensation issues. It's an issue where we truly need advocates who understand the needs of working men and women. So we just want to say we really appreciate your coming out and sharing that. We think the law society has been helpful in terms of its clarification to you, for the record.

Mr. Hartt: If I may, for the record, I just would certainly want to make sure that it's clear that although I'm in possession of the letter to Wayne Samuelson—we are linked, as the unions are linked, but we're a separate organization. Somehow, in the communication and the fact that I haven't been with that organization that long, I guess, I didn't talk to Wayne ahead of time about making sure we were included in this organization. So in his presentation, he was mostly referring to direct union representatives.

What doesn't appear in the handout—and I would certainly clarify for you—is that back in 1994 when this model was conceived, a number of the founding business managers of construction unions were at a central council in Toronto lamenting the fact that just representing injured workers before the compensation board was taking more and more time, but because it was just something they did, as opposed to their main role in life as business managers, they weren't able to keep up with changes to the regulations. So they were coming back, losing cases, as we say in the vernacular, or not succeeding in getting rights for those injured workers. I certainly credit that group. I wasn't around at the time, but I credit that group because they realized that what they needed to do was to come up with some way of keeping up with this and still be able to do their job. There were four initial main groups—the painters, the asbestos workers, the millwrights and the plumbers, I believe—that got together and said, “We've got to do something here, so what will we do?” They began this organization that's become what it is today. As I said, that's all we do. We have four people, morning to night, and that's all they do. I got it easy; I administer the group. So I don't actually do the representation, but Eric is one representative. Why I brought him is he's a representative of the four, which you can see. It's not somebody talking who doesn't actually represent.

We're interested in making sure that you know we exist, as a committee. We're a little uncomfortable leaving it out there as union representatives, maybe grandfathered, or certain things may be grandfathered. Heck, to be honest with you, I'm not 100% sure grandparented is what we look at. We think our people are very highly skilled. I did allude to the fact that, if you look at the CVs, they've taken the labour courses that are available in representation and they've gone beyond that. As a matter of fact, we're testing this fall with Tracey Lowe, one of our 12-year veterans. We're sending her back to university to take a case study course that will require her, in a university graduate setting, to analyze cases, put forth a case study, say what's going on there and make recommendations, because that's what they do, all day long, every day.

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We think we have a program internally that helps our own people—we can't speak for others—to become more highly tuned. We have the fundamentals in the workers' compensation in place, but we want to make sure these workers—and a lot of them are immigrants, English isn't their first language. They don't know their rights. So we have a lot of responsibility and the onus is on us to make sure it's professional.

Indeed, to your point, many lawyers do not know the compensation act, and we do get a number of calls from lawyers asking us for advice.

Mr. McMeekin: Thanks for your good work. Uncle Charlie would be proud of you. I'm proud of you. By the way, I'm still working on the ballroom dancing.

The Vice-Chair: Mrs. Elliott

Mrs. Elliott: Gentlemen, many years ago I worked for the Office of the Ombudsman, and one of my primary areas of responsibility was dealing with workers' compensation issues. I totally agree with what you're saying. By the time those issues got to the Ombudsman's office it was already pretty much too late to do anything, because in many instances the injured workers had not had professional representation during the course of the proceedings. I understand the sheer numbers and the depth of frustration people felt. I applaud what you're doing and think it's really important.

You're quite right: There are many lawyers who don't understand it, have not specialized in that area, and there are lots of reasons for that. You fulfill a particular niche that's really important. I too would like to see it clarified to make sure that you don't have any hesitation in continuing to do the great work you do. Thank you very much.

The Vice-Chair: Thank you very much, gentleman.

Mr. Hartt: Thank you for the opportunity to speak to you today.

TRIOS COLLEGE BUSINESS TECHNOLOGY HEALTHCARE

The Vice-Chair: Could triOS College Business Technology Healthcare come forward, please. Good morning. We have 30 minutes for your presentation. You are en-

titled to use the entire 30 minutes for your presentation. If there is any time available of that 30 minutes afterwards, there is an opportunity for members of the committee to comment or ask questions. Would you please, for the record, state your names.

Mr. Frank Gerencser: My name is Frank Gerencser. I'm the CEO with triOS College. My colleague here is Cheryl Findley. She is faculty head for legal services within our college.

First of all, I'm going to give a brief introduction and then I'll turn it over to Cheryl, as the legal expert, to make more comments on our presentation.

What you see here in front of you is a package. On the left-hand side you have a little bit of background information, at the front, on our college. There's a handout of the four slides, and if you could pull those out, because we'll refer to them in the presentation. There's a bit of a background on the two of us and there's some information on our association, the Ontario Association of Career Colleges, of which I am now the past president.

I think I may have met several of you right here in this exact same room, because we've had open houses here and then downstairs in the members' cafeteria. There's a brochure of myself actually handing a new banner about the value of education that works over to the current minister. I look forward to meeting several of you next Monday, September 18, when the proclamation finally happens for the new Private Career Colleges Act. It's going to be a great step forward.

The rest of this is just some background for later on the actual content of the curriculum and what we do. I'm not going to be referring to it in the presentation.

A quick bit of background: As I said earlier, I'm the CEO of triOS College. I'm also the past president of the Ontario Association of Career Colleges. As a college ourselves, we have six locations. We've had about 3,000 individuals apply for paralegal training in the past three and a half years. There are about 500 students who have actually gone through or are currently in our six colleges.

As the Ontario Association of Career Colleges, we have approximately 500 member colleges specializing, as lawyers do, in various areas of training. As Ted pointed out, we're in a fair number of them, as you'll see.

Cheryl is our faculty head. She is a lawyer; she also has a bachelor of social work, and is the chief instructor that we have in our Hamilton campus. She'll be doing the majority of what's here under the presentation. She has an extensive litigation background. I have also been involved as one of the members of the Law Society of Upper Canada's college advisory committee. They've reached out to both public and private colleges, as well as the Ministry of Training, Colleges and Universities, to pull in feedback and information so that they can design the education part of this quite correctly.

I will turn over the presentation now to Cheryl, but I would like to just comment in a quick point on the summary of what we have here. The essence that you're going to see in our presentation today is that we are in support, in principle, of the government's act, Bill 14, for

the law society to regulate paralegals. We'll talk about the details in the presentation. On the right-hand side, you actually have the content of what we're going to be talking about in our presentation.

Ms. Cheryl Findley: I wanted to speak today about Bill 14, in specific schedule C, the amendments to the Law Society Act, and how it impacts or how the interaction would work between community colleges and private career colleges that provide the educational services to paralegals and the law society, as set out in the provisions.

First, regarding the licensing of paralegals, we're in support of the proposed legislation and the licensing by the Law Society of Upper Canada of persons who are authorized to provide legal services in Canada. However, we are not concurring with part B of section 4, which is that some groups would be excluded under the bylaws, allowing or permitting unlicensed legal practitioners. Our position is that all persons who are providing legal services should be licensed.

Since all persons authorized to practise law and all persons authorized to provide legal services who practise in a specific legal environment are to be treated equally in that environment, licensing will ensure the protection of the public interest by maintaining a minimum standard of certain, what I'm going to call core competencies. Those core competencies would include knowledge through a testing process, under the licensing exam, of the rules of professional conduct, accounting practices, and substantive and procedural law in the specific areas that are permitted.

If you look at the handout that shows our slides, and look at the application of licensing provisions, the difference between allowing the bylaws to exempt certain groups or not is the difference between the diagrams on the right and on the left. On the right, we're advocating that there are certain core competencies for which all persons who provide legal services would be required to be licensed. Then, the bylaws could permit specific specialties where the certain core competencies and substantive law and procedural law for those specific areas could be dealt with separately. But we're stating that there should be a certain basic provision of core competencies for all persons providing legal services. The same standards in education regarding those minimum knowledge requirements or core competencies would be imposed by the law society in their role as licensors, and through the accreditation of educational programs.

Our second primary point regarding the amendments and schedule C is that the amendments to the Law Society Act should apply to all persons authorized to provide legal services in all courts and administrative tribunals, whether they are self-regulated or not, and that the minimum licensing requirements should apply to all tribunals in Ontario. It's our position that whether you are practising in a specialized area as a paralegal, for example, immigration, financial services board or Ontario

Human Rights Commission, you should still have a basic licence that provides for core competencies.

If you look specifically, I've put in a box for you the part of your legislation that I'm referring to, subsection 2(1): that the act is going to apply to all provincial and federal courts; all tribunals established by an act of Parliament or under an act of the Legislature of Ontario; any commissions or boards etc. Therefore, we are stating that our position is that there should be a certain licensing that applies to all.

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Our most important concern through this process, as educators or the providers of legal education, is our role vis-à-vis the law society as set out in the legislation. Sections 4.1 and 4.2 clearly indicate what the function of the law society will be and how it is to work with educators.

I just wanted to highlight—and you'll see that I've done that on your handout—specific parts of those provisions. Clause 4.1(a) states that all persons, both those who practise law and those who provide legal services, must meet standards of learning, professional competence and professional conduct appropriate for the legal area they are to provide; that those standards are going to apply equally whether those individuals who are providing the services practise law or are providing legal services. So they'll apply equally to lawyers and paralegals within a setting. The primary goal of the society is to protect the public interest. Therefore, if you look at your handout, it's our submission that section 4.1 sets out three cornerstones of the function of the law society.

Those cornerstones are to provide standards of learning, professional conduct and professional competence. Those cornerstones are going to be circumscribed by bylaws that dictate the areas of practice in which persons who practise law can be qualified. It's our submission that the standards of learning would be established by the law society, with input from the college advisory committee. So there would be a marriage or interaction between the law society and the colleges in developing the standards of learning. Those standards of learning are going to have to be very concise and measurable and applicable equally to all providers of legal education, whether they be public colleges or, as our group is, private career colleges.

The standards of learning need to address both substantive law and procedural law in equal portions. One of the difficulties in protecting the public is that, as educators, we have to ensure that the providers of legal services have the competencies in procedure or the provision of the service itself, not just the substantive law. Therefore, the educational programs are going to have to equally address procedure and substance.

The delivery of the standards of learning would be the role of the colleges. The curriculum should address those cornerstones of professional conduct and professional competence, and the development of that curriculum would be, in part, by working with the Law Society of

Upper Canada. The measurement of the success of the educational programs would be the licensing program and exams themselves, and the discipline would be through the law society.

I wanted to address what I perceived on behalf of our college as the curriculum requirements or core competencies. Subsections (5) and (6) of Bill 14, schedule C, set out a fairly concise list of the provision of legal services. It's our submission that it includes all advocacy, drafting skills, advice—which includes legal research—preparation of documents and negotiations.

It's our position that those standards of education that are prepared by the law society and the accreditation of the educational institutions will include a review of the procedure on substantive law for all of the areas of law that are permitted by bylaws. The curriculum must address core competencies of advocacy, drafting skills and legal research.

I've included for you to review afterwards just a brief overview of the program provided by triOS College to the paralegal students. You'll note that it includes both procedure and substance in equal portions. In fact, we have computers in the classroom. The provision of the courses includes the development of skills in the direct provision of legal services, not just the substance in the areas of law.

I have given you a course guide for roles and legal office procedures, which is one of approximately 30 courses we provide. It's the substance and the procedure that's included in roles which we perceive to be a necessity in terms of core competencies for all practitioners who provide legal services in the community.

When you review it, you'll see that it reviews professional conduct, the Law Society Act, Solicitors Act, the rules regarding non-authorized practice, the rules regarding trust accounts and accounting practices, the rules regarding confidentiality, and how to maintain your practice on a day-to-day basis. It's the provision of that level of education that we feel is required to protect the public in terms of the provision of legal services.

We have tried to leave sufficient time for you to ask questions regarding our role in the community, our role as a educational provider and our review of your proposed legislation.

The Chair: Thank you very much. About four minutes each, and we'll start with the government side.

Mr. Zimmer: I just want to clear something up here to the question for the CEO and officer. I understand your submission on the face of it, and that is that the regulation of people doing paralegal work should be a broad one and include everyone, without any exceptions. That's the thrust of it?

Mr. Gerencser: Correct.

Mr. Zimmer: I note that you have described yourself as a member of the law society advisory council paralegals. Of course, that's not the position of the law society, and I just want to make it clear that in your submission today you're speaking personally and not on behalf of the law society.

Mr. Gerencser: That is correct. This submission is the point of view of triOS College. triOS College is a member of the Ontario association. I'm actively involved, but this is our presentation, our point of view. We support the act in principle, with these cornerstones. We feel that there's a core set of skills that everybody who's a paralegal, no matter what, needs to understand, and then, after that, it would be split-off as in the previous presentation where there would be knowledge of injured worker rights etc. and other areas of specialty covered in the diagram that we have.

Mr. Zimmer: Again, I just want to be clear. Your submission today is a personal submission on behalf of the college, not on behalf of the law society?

Mr. Gerencser: That is correct.

Mr. Zimmer: Thank you.

Mr. Gerencser: It's on behalf of the college, in support of the act in principle, with minor deviations.

The Chair: Mrs. Elliott

Mrs. Elliott: I just had a question regarding the provision of legal services and the definition that you have set out on page 4 of your presentation. How would you see the practice of law to be differentiated from the provision of legal services? The definition that you have is quite broad.

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Ms. Findley: That's correct. This definition is taken from Bill 14 itself. The difficulty in reviewing the bill is that it indicates that in the areas of practice which are going to be permitted by the bylaws, the standards for anyone providing legal services in that setting would be equal. So it would apply equally to those who practise law or those who are providing legal services within that specific area of practice. If that is to be the case, therefore, to protect the public, the standards of education need to be the same in those basic core competencies.

Mrs. Elliott: But you would support that definition as stated?

Ms. Findley: Yes, we support it. I think one of the difficulties is that our current rules of professional conduct do not allow non-lawyers to provide, for example, legal opinions—correct?—in rule 5, I believe, sub 1.03. If that's the case, I think that the rules of professional conduct may have to be amended as this act is amended, so that if this is the definition of legal services that is to apply equally to all those who practise law or provide legal services, they can then do what they need to do in that setting.

The Chair: Mr. Kormos.

Mr. Kormos: I confess that I'm far more familiar with similar programs in the public community college system than I am in the private system. I look at the curriculum here, the diploma program, and we're really putting the cart before the horse. We don't know—and I'm going to be asking this committee to ensure that we have the law society here for a lengthy enough period of time to hear from them—exactly what they have in mind as to the scope of practice. Let me explain why.

You've got a list of programs here where you're effectively creating a jack of all trades, master of none. I understand. What can you do in one year? What can you do in two years? Quite frankly, we've all witnessed people with three years of law school and a year of articling who can still manage to screw up a whole lot of stuff when it comes time to doing real-world work. It's true. That's why we have errors and omissions insurance that's being paid out at untold levels.

Just very quickly, a person is a damned fool to purport to prepare a will for somebody, even what they think is a simple will, unless they have a clear and extensive understanding of a growing field of the law around estates, real estate law, family law, income tax law etc. People come into our constituency offices, and I urge them to go to the more expensive lawyer, quite frankly, who specializes in wills and estates, because it's money saved at the end of the day. With all due respect, I can't anticipate—just like I wouldn't expect a general practice lawyer to undertake a will any more than I would a paralegal. Real estate: How many more revelations do we need? There's going to be some major discussion in the next few months around the law of title and the role of advocates, lawyers.

What I'm interested in is exactly what it is that people have in mind in terms of the scope of practice of paralegals. Summary conviction offences? I'm sorry, the defence of a common assault can be as complex as the defence to an armed robbery, a second-degree murder. It involves all the same principles, all the same issues. Why are we suggesting that somehow a summary conviction offence like common assault requires a lesser level of expertise than the defence of a break and enter? That's my problem. I support paralegals in principle; I support their regulation in principle. My problem is the scope of practice and how we can justify that a less trained person can handle summary conviction offences, when in fact all of the same training and principles apply for a common assault as they do for an armed robbery.

Ms. Findley: It's going to be up to the law society to define the scope of the areas in which paralegals may practise. It's going to be circumscribed and defined, but at two levels. Right now, our rules of professional conduct allow law clerks—law clerks are simply trained legal professionals who work under the supervision of a lawyer—to do certain activities in these different substantive areas of law. Most paralegals who graduate our course—I believe about 96%—choose to work for someone else when they graduate. Just like most lawyers, I worked for a large firm for five years before I struck out on my own. It is an acquired skill level. There are layers and layers of knowledge that are required in each of these substantive areas of law, and it may be that in certain of these substantive areas of law, there should always be supervision by lawyers.

Our course is designed given the reality of the marketplace. The reality of the marketplace is that most of these graduates of the paralegal course work as law clerks or are employed by a paralegal firm for some

period of time until they acquire further skills. We are the beginning stepping stone of their education. It's the same way for lawyers in law school. We take a vast array of substantive areas of law and certain core competencies, and through articling and our bar admissions course, the core competencies are tested and we are licensed. That does not mean that we are an expert in all areas of substantive law for which we have taken a course. It is a learning curve and it is something which, once you have the basic core competencies, you learn over the years. It's layers of knowledge. It's no different.

I think it's going to be very clear that the scope of the areas of law that are permitted by the bylaws will be a difficult journey to determine what is going to be in the public's interest. I'm not prepared to comment on specific areas at this point in time, but I think it's up to the Law Society of Upper Canada to determine those areas of practice for which those who provide legal services, as opposed to those who practise law, would be competent.

The Chair: Thank you very much.

CANADIAN ASSOCIATION OF PROFESSIONAL IMMIGRATION CONSULTANTS

The Chair: Next, we have the Canadian Association of Professional Immigration Consultants. Good morning, gentlemen. If I can have you identify yourselves for Hansard, you can start.

Mr. Berto Volpentesta: My name is Berto Volpentesta. I'm the executive director of the Canadian Association of Professional Immigration Consultants.

Mr. Phil Mooney: My name is Phil Mooney. I'm the national director of policy and lobbying for the Canadian Association of Professional Immigration Consultants.

Mr. Volpentesta: The approach we wanted to take today as we reread our submission was that there's a lot of information in there that really depends on an understanding of what immigration consultants do and what the struggle has been over the years to become regulated as immigration consultants. So I will begin by giving a brief history and then Mr. Mooney will continue by specifically addressing some of the recommendations that we tried to prepare on this quest to regulate paralegals.

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CAPIC is really a combination of two professional associations that were created to push towards regulation of consultants, one being the Organization of Professional Immigration Consultants and the other the Association of Immigration Counsel of Canada. Those two associations worked for about 10 to 15 years pushing the federal government to regulate immigration consultants, because we realized it's important work that's being done and the consumer needs protection from people who just think they can enter a field because they've done their own case or perhaps they've helped a family member or a friend in part of an immigration process, which could

be anything from appearing before the Immigration and Refugee Board of Canada or other tribunals to helping a skilled worker make an application to come as a permanent resident to Canada. There are very different skills that are involved in that.

Realizing that, these associations pushed the federal government over a number of years until finally, in 2003, they began a process where immigration consultants would be self-regulated. In 2004, it resulted in a body called the Canadian Society of Immigration Consultants, and that has become the regulator for immigration consultants.

The Canadian Society of Immigration Consultants is, as I said, our regulator. The Canadian Association of Professional Immigration Consultants is the professional association. So, if you will, we are striving to be the bar association to the law society. We try to provide services to our members that would be founded on our pillars, which are information, education, lobbying and recognition. Those are the benefits we try to bring to our members.

Our members consist of regulated, or what they now call certified, Canadian immigration consultants who are full members of the Canadian society, as well as members who have an interest in immigration. These might be the financial institutions that provide immigrant investor funds, non-governmental organizations that provide services to immigrants, students who are learning to become immigration consultants. So we provide different levels of membership as well.

One of the things we do is to inform people about the Canadian Association of Professional Immigration Consultants, and that's why we're here today. We've been through this process of regulation and perhaps we can bring some insight. That will hand you over to Mr. Mooney.

Mr. Mooney: Thanks for the opportunity to provide input to your committee.

Why should the input of immigration consultants be considered on this issue? We would like to give you four principal reasons. First, we have recently gone through the experience of being regulated and can share some valuable lessons learned, not of being regulated but of going through the process of being regulated. Many of our members perform or have performed duties very similar to paralegals. Many of them start at that level and then eventually become immigration consultants. Many of our members employ individuals who act in a very similar capacity to paralegals. And in a very real way, our daily activities help us understand the gap between paralegals and the legal profession, so our perspective on this issue can help identify and address the many issues which must be considered when establishing the boundaries between these professions.

We would like to address the issue of moving from an unregulated to a regulated environment. We know that you recently received a submission from Mr. Ben Trister, the former chairman of CSIC, about his experiences with this issue. We would like to say that we're not interested

in turning this committee into a platform on which the problems that some CSIC board members had with other CSIC board members should be debated. You may be surprised to know that, for the most part, that dispute happened behind closed doors and that the consulting community—us—was largely in the dark about what was happening with our own money. Our own organization was advised as late as September of last year that CSIC was not interested in discussing issues with us as an organization and would only respond to individual members.

When the issue spilled over into the public domain, we were both very vocal and very concerned, and pushed all parties to deal with the issues quickly and professionally. We pushed for an independent audit of all CSIC finances, which has been done, and made submission after submission to CSIC and others to protect our members' interests.

Again, we will not comment on the specifics of the dispute between three directors, including a lawyer, a consultant and a public interest director, and the other six directors, including two consultants, two lawyers and two public interest directors. This dispute has been portrayed as a dispute between consultants and "others," but nothing could be further from the truth.

We would like to correct one error in Mr. Trister's statement as read. He stated that "immigration consultants are not ready to be regulated." The fact of the matter is that immigration consultants are already regulated, officially as of April 13, 2006, but practically from April 2004. The fact is that somewhere between 800 and 1,200 previously unlicensed consultants now operate with a stringent code of ethics, maintain trust accounts and have met very rigorous membership standards, including passing language, ethics and competency tests. This should be a clear demonstration that fact should win out over fiction, even when the fiction is put forward by an eminent attorney.

So what have we learned from the process? What is the purpose of us being here? Here are some of the lessons.

(1) It takes time. CSIC was faced with very tight timelines imposed by the government of Canada, which, in hindsight, could have been more understanding. Because of these timelines, CSIC was forced to focus most of their resources on the basic structure, such as websites, administration, initial testing, and professional standards, and it had very little time to spend on effective communication or even governance. You may know—and this could be a guide in terms of how this regulatory body would be set up—there are seed funds provided by the federal government. Those funds came with strings attached that said you had to do this by this, this and this, so in order to meet those deadlines, they had to focus on areas of administration and structure. This put an enormous burden on the board, many of whom had to put in huge amounts of time—which led to problems about compensation—since there was no administration team in place. So, recommendation number 1: Ensure that a

professional administration team is put in place first to properly manage the initial business of the regulator. This should be the case whether you decide on a separate regulator for paralegals or if the work will be done by the LSUC. Put the money into the project to build a strong foundation of professional administrative services.

(2) Setting the ethical and educational standards high and making them all-inclusive improves the level of professionalism. The initial DACUM, which was the road map for how to regulate consultants and what skills were required, and which laid out the scope of consultants' professional responsibilities, was developed in a very comprehensive manner, with extensive input from very experienced consultants. Similarly, the development of the professional skills exam was supervised by independent experts who had done similar work for nurses, accountants and other self-regulating organizations. The process of qualification was a challenge to all immigration consultants, primarily because it required all of us to expand our knowledge of the immigration system to areas of practice which were outside of our normal day-to-day activities. The rationale was that if we were to be licensed to provide services in all of these areas, then we should, therefore, be competent in all of these areas.

This has led to a substantial improvement in the competency of all immigration consultants. It is reasonable to say that an immigration consultant who has met the standards of CSIC is in a better position to serve the interests of the consumer on immigration matters than a new lawyer who has just passed the bar. Both are allowed to provide immigration services. So, recommendation number 2: Set high standards, but with extensive input from those who will be regulated.

(3) Be sure to define the initial focus of the effort carefully so as not to raise expectations, with a practical timeline for implementing the whole package. It was stated as a criticism of the process that CSIC only regulates its members and does nothing about non-members who may be abusing the public. Certainly, we hear this theme repeatedly from our members. Effectively, we are paying to police ourselves from ourselves, while others can operate with impunity. In reality, CSIC can no more regulate non-members outside of Canada than the law society or any other group can. The basic premise behind self-regulation is that you agree to be regulated. This does not mean that unregulated practitioners get off scot-free; it only means that the tools to deal with unregulated practitioners are different and include government sanctions, public awareness, and civil and criminal complaints. In the rush to get established, CSIC has not had time to clearly define or communicate a plan for dealing with unregulated consultants, which is a principal concern of the people being regulated, but rather has given the impression that they either can't do anything or don't want to. This is one of the effects of not having a good communication strategy. So, recommendation number 3: Be sure to communicate the whole vision for the future, giving practical deadlines so as not to raise false expectations.

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(4) Clearly define the limits of professional duties and the extent of responsibilities. Immigration consultants now know that they cannot practise in certain areas of immigration, that they must refuse to handle files for which they are not competent and that they are fully responsible for all of their agents and employees, without exception. We believe that any system of regulation for paralegals is in addition to the overriding responsibilities of the lawyers or other professionals whom they support. This puts the onus for consumer protection on the most senior of the professionals who are involved in the work. If we, as an immigration consultant, send clients to a paralegal for certain services, we must still be held accountable for consumer protection; the same for lawyers or accountants. The paralegal would also be fully responsible for the services they perform which are allowed and which are directly solicited from the public. Recommendation number 4: Be sure that responsibility and accountability for consumer protection cannot be delegated by other professionals who recommend or use paralegal services.

(5) Be compassionate; be gentle. At CAPIC we have a significant concern that the process of regulation, while professional, thorough and extensive, can never be perfect. We are witnessing the extreme stress caused to individuals who, having provided good, honest and ethical service to the public for many years, are nevertheless failing to perfectly meet the standards and are therefore facing the ruin of their businesses, with all the attendant consequences. Yet the response to this problem from CSIC has been, "We always knew there would be consultants who would not meet the standards." They probably call it collateral damage. If the standard is one of competence, we agree. If the standard is one that is not entirely germane to the practice of the profession like, in our example, language capability, we have pressed for a more realistic approach other than pass/fail. It can be noted that the standard of English or French required by CSIC exceeds the standard for university entrance, and even born English-speaking persons like myself have had trouble passing.

In many cases, we've maintained that the ability to communicate effectively in the language of the client is more important to consumer protection than the ability to write long essays spontaneously, which is what is tested. Creative and compassionate persons should be able to construct an alternative mechanism, if all else fails. Some would call it grandparenting. Recommendation number 5: Be sure that the regulator's desire to regulate does not cause harm to the consumer through being too zealous.

(6) Finally, on the issue of who should regulate paralegals, we recommend that the method of regulation should meet the need. Because immigration consultants work with a federal program and work with many clients outside not only their home province but outside their country, it makes sense that the regulation of immigration consultants should be a federal responsibility. A similar rationale would guide the choice of a regulator for

paralegals. If the community served by any paralegal is entirely local, then the regulator, which could be provincial, federal or even municipal, should be structured to meet the local needs and realities. Recommendation 6: Make the solution fit the need.

Thank you for the opportunity to present our views.

Interruption.

Mr. Mooney: This is a faux pas. We disbar members for bringing these into meetings.

The Chair: Thank you very much. About five minutes each. We'll begin with Mrs. Elliott.

Mrs. Elliott: I would just like to thank you for your—

Interjection.

Mr. Mooney: Yes. Thank you very much for your kind attention. Sorry for the distraction.

Mrs. Elliott: I'd just like to thank you for your presentation and your very practical suggestions.

The Chair: Mr. Kormos.

Mr. Kormos: How much time, Chair?

The Chair: At least seven minutes

Mr. Kormos: Thank you kindly, gentlemen. I was more interested in hearing about the cat fight within the board, but I guess we'll discover the details of that in a different forum.

This was the presentation, as I recall, on the first day that the committee sat. We weren't really clear about what was going on after we heard it, because several of us discussed the comments. The impression that some of us got was that if an immigration consultant joined the self-regulatory body, he or she then was immunized from any other regulatory process, but that if a person didn't join the body, they weren't regulated, and you seemed to confirm that because, as you point out, it's voluntary. I suppose the difference here is that the law society is empowered to regulate people who practise law, whether they're members of the law society or not, which is what they do when they prosecute people who practise law without being members of the law society.

Mr. Mooney: The only difference is, the law society has provincial sanction to go after individuals who pretend to be lawyers. CSIC does not have that provincial sanction as yet.

Mr. Kormos: Okay. Exactly. Now, CSIC doesn't exist as a constitutional entity in terms of its federal jurisdiction. It just happens to be Canada-wide because your members, people in the profession, decided to create a Canada-wide body?

Mr. Volpentesta: If I could, CSIC is authorized by the federal government under a statute of immigration, so Citizenship and Immigration Canada amended its act and regulations to say that consultants have to be a part of this body, CSIC.

Mr. Kormos: Have to be.

Mr. Volpentesta: Have to be.

Mr. Kormos: So if you're not a part of the body, you are committing an offence?

Mr. Volpentesta: It is an offence in the Immigration Act, yes.

Mr. Kormos: Okay. Can we get a copy of that, please, Mr. Fenson?

Mr. Volpentesta: Now, the problem is that trying to get Citizenship and Immigration Canada to go after people who are not practising is different.

Mr. Kormos: There you go. The other problem is, what about guys like Jimmy K., the Liberal member of Parliament whose reported practices, immigration consultancy work, we've all heard about, when he's not sniffing out marijuana grow houses or screwing up people's federal leadership campaigns? There are going to be any number of paralegals in the province of Ontario who are going to take on immigration work, who are going to assist people in immigration matters. Are they in a grey area, or would they fall, in your view—this is obviously your perspective—under this legislation?

Mr. Mooney: It's not even our view. There's a practical regulation and there's a policy and operations manual that define the line, and what that line says is that once an application is filed with Immigration Canada, if you want to deal with Immigration Canada on that application, you must either be the applicant—sorry; and for a fee—or an attorney and a member of the bar association or law society, or a notary public of Quebec or a member of CSIC. Only those individuals are entitled to deal with CIC on those issues. Up until the point of application, as it currently stands, anyone can provide advice, help fill in forms, etc. We are opposed to that part of it, but the rule right now stands.

Mr. Kormos: Because I am familiar with certain MPPs who have—and I can't remember the form number—people sign the "Use of a Representative" form—

Mr. Mooney: There are two forms. One is for paid representatives. The other is just for individuals to be given information from a file. That's called an authorized-information form.

Mr. Kormos: Use-of-representative.

Mr. Mooney: Well, there are two use-of-representatives: 5476 is what you sign if you pay—

Mr. Kormos: Yes, 5476.

Mr. Mooney: —but you only do it for a fee. On the form itself, it says, "I am being paid a fee to represent this person."

Mr. Kormos: Or, "I am not and I am a family friend."

Mr. Mooney: Yes. That's if you're not paid a fee.

Mr. Kormos: Yes, exactly. So those people are covered, then? Because your regulatory regime only applies to people charging fees. Is that what you're saying?

Mr. Mooney: Yes.

Mr. Kormos: All right. Because this legislation would appear to apply to people whether they were charging fees or not. I'm talking about Bill 14. Correct me, in terms of the PA, if I'm misreading it. So yours only applies to fee-paying. What about the church organization? What about—were you here when the building trades advocates were here?

Mr. Mooney: Yes.

Mr. Kormos: What about operations like that? There are any number of non-profits, for instance, that don't charge fees and that assist in immigration. Where do they fall into your scheme?

And please, Mr. Fenson, if we can get the regulations and the—

Mr. Mooney: They're not covered by CSIC.

Mr. Kormos: They're not covered, because they're not fee-charging.

Mr. Mooney: That's right.

Mr. Kormos: Even though that could be their main area of practice or advocacy.

Mr. Volpentesta: That's right. If I were advocating, I would say that they should be covered by someone, because there's still a lot of continuing professional development that goes on. These fields are changing constantly, especially immigration. I'm not familiar with other pieces of legislation, but I'm sure they change as well. You need to be up to date because you're dealing with people's lives here.

Mr. Kormos: So when I get, coming into my constituency office, reports from constituents who have been ripped off by so-called immigration consultants, who have been ethnically exploited—and you know what I mean by that: ethnic exploitation within that community—who have had application-for-refugee-status affidavits consisting of one page, with the sort of stuff that a high school kid could improve on by accessing the Internet, never mind the huge area of expertise there is in the academic world, I should be reporting them to you?

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Mr. Volpentesta: To CSIC. You're going to hear from CSIC later on in your hearings, but CSIC is the regulator. You should tell CSIC.

Mr. Mooney: If the person who prepared that application is a member of CSIC, then the individual consumer has a right to complain, and that individual will be called up to answer any sort of questions and complaints. Just like the law society, we have errors and omissions insurance. If that person is not a member of CSIC, then your recourse is the criminal courts.

Mr. Kormos: Because that's one of the large areas of rip-offs, scams and outright shameful misrepresentation. Obviously, if people get deported, many times the consequences are fatal, or close to it.

Mr. Mooney: In the past, we had to act and operate in an environment where no one could tell the difference between, let's face it, the 80% or 90% of all the people that operate ethically and honestly and have the best interests of the client in their hearts, and the others who operate differently. Now, if you are a CSIC member, that means you have met standards, you have passed examinations, you are of good character, and there are police checks and many other checks like that. For anyone who has not met those standards, our job, and what CSIC's job also should be, is to educate the public to say, "Just check. Is this person a member?"

Mr. Kormos: Mind you, I've seen more than a few of those files from law offices too.

Mr. Mooney: As have we all.

The Chair: Thank you very much. Mr. Zimmer?

Mr. Zimmer: I should tell you, I was an assistant deputy chairman of the Immigration and Refugee Board of Canada, so I had some involvement in setting this up.

Just to clarify for my colleagues, the regulation of the immigration consultants by the federal government is a very narrow exercise. I think you will recall that the federal government, particularly at the Immigration and Refugee Board, where they dealt with all of these things, felt there was a clear problem with so-called consultants all over the place and varying standards and all sorts of problems that you've read about in the paper. The federal government did not so much regulate the consultants as it said that anybody who wants to appear in front of the Immigration and Refugee Board, or in fact have formal dealings and informal dealings with the federal government, has to be a member of the immigration society. The federal government then charged a fee for someone to become a member, reviewed their resumé's and so forth and so on and vetted the membership; they looked to minimum qualifications and experience and so forth. That's the extent of the regulation in the world of immigration consultants.

Mr. Mooney: No. In the initial stages, because there already were some thousands of people practising immigration, when the first rules came in they said, "You all have to apply to become provisional members." To be a provisional member, you had to pass a competency test, you had to get a police check.

Mr. Zimmer: But only if you wanted to appear in front of the Immigration and Refugee Board. I could operate a little immigration consulting practice in the backroom of a plaza somewhere just giving general advice.

Mr. Mooney: No, that's not the start of it. The start of CSIC was that everyone who wanted to deal with immigration and file applications on behalf of people for a fee with CIC—not just the refugee board; with all immigration applications, whether it's visitors, workers, permanent residents, IAB refugees—and anyone who was going to act on behalf of an individual for a fee had to join CSIC. CSIC initially grandfathered in people after a basic competency test, but there was a two-year window where they set standards. Then all immigration consultants had to pass—in fact, the window closes October 31.

Mr. Zimmer: But there was no regulation of anybody who just wanted to offer someone general advice about what they could do as an immigrant or not do. If you wanted to have formal rules—

Mr. Mooney: The current rules state that if you offer someone advice or charge them \$50 to fill in a form, you don't have to be a member, as long as once that application is submitted, you know you have no access to the file.

Mr. Zimmer: That's right.

Mr. Mooney: We don't agree with that, and we're making depositions in different venues for that, because

we think consumer protection starts the minute a consumer parts with his money. We think that the process involved should be that if you're going to charge money for any service related to immigration, you should be in a regulated profession.

The Chair: Thank you, gentlemen.

Mr. Kormos: On a point of order, Mr. Chair, very quickly: The comments by Mr. Zimmer make this less and less clear, because they've been validated. Can we get some hard data referring to the limited scope of the supervision of CSIC, the remnant which Mr. Zimmer speaks of, which is unregulated and unsupervised by any federal legislation? If we could somehow get a sense of whether that means those people fall under the provincial jurisdiction of the law society, or is there somehow some federal jurisdiction, which is the impression that's been created. I don't believe that's necessarily the case.

Mr. Mooney: We'd be happy to forward a copy of the act and regulations and the operations manual.

Mr. Kormos: Yes. If you could work with Mr. Fenson in that regard, we'd appreciate it. This is a huge area. Thank you.

NORTHWEST TITLE VERIFICATION SERVICE INC.

The Chair: Next will be a teleconference with Northwest Title Verification Service Inc.

Mr. Tindall, are you on the line?

Mr. Robert Tindall: I am.

The Chair: Good morning.

Mr. Tindall: Did we just catch up?

The Chair: Yes. Welcome. You have 30 minutes, and you may begin any time you'd like.

Mr. Tindall: Very good. As you know, my name is Robert Tindall. I run a business called Northwest Title Verification. I'm a law clerk, I'm a paralegal, I'm a legal assistant, a court agent, process server, planning consultant, estate planning consultant, title searcher, conveyancer and a whole ream of other names that people have given me over the years, depending on the type of job I was doing.

I've been doing this work since 1975, and I started working inside the law firms. I worked for three—for Thunder Bay—fairly large law firms. About 15 years ago, I was approached to set up my own practice in contract to one of the law firms and go out and seek other people who might also contract to me. So I became at that time, a law clerk, a paralegal, and I use that term freely, both ways. Everybody has this thing about the word "paralegal," and one of the things they keep forgetting is that there is no difference between what a paralegal does and a law clerk. The law clerks work within the offices, and at one point in time I was a member of the Institute of Law Clerks of Ontario. As soon as I left the firm I was with, my membership was gone; they wouldn't accept me. I was told at that time, "There might be other groups out there for you, but you can't be a member of this group because you're not

working in the law firms." So somewhere along the line we picked up the name "paralegals." A spade is a spade is a spade—it's still a shovel.

My background is that I have been doing, over the past 15 years, predominantly real estate type of paralegal work, along with a smattering of rent review and assessment review and some small claims court and quasi-judicial things in front of planning boards, the OMB, that kind of thing. I have been on the board of directors of numerous volunteer organizations, most of the time in some executive position. I have been on the board of three financial institutions, two of which I became president of. I was also the lay counsellor appointee by the province of Ontario to the association of Ontario Land Surveyors, which is the self-governing body for surveyors. While I was on that board, I was part of the discipline panel and was the complaints review officer.

So I bring a variety of experiences with me when I'm speaking here. What I'd like to talk to you about today is how Bill 14 is going to affect my profession, that of being law clerks and paralegals.

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The first thing I'd like to say, though, is that I'd like to express my disappointment that the committee was not able to meet in northern Ontario. I'm 1,000 miles away from Toronto, the centre of the world as far as most Toronto people feel. For me, there's another 300 miles of province to the west of me and there's perhaps 1,000 miles to the north of me. The committee has no presence in northwestern Ontario as far as I can see. There's very little discussion about what's happening with this bill, not just with the public but also my colleagues and most of the lawyers located in the north. Very little has been said about the effects of what this is going to do and who is going to be affected. It's not like talking about the favourite TV show of the week. You very seldom hear it even mentioned.

The only reason I'm actually here is because my cousin, who's a paralegal in Hamilton, tuned me into the fact that there were going to be hearings back in the spring and said, "Jeez, you should be involved with this because you've been doing this for so long." I said, "Well, I've never even heard of it." Up until that time, I was in the dark. If you want to ensure that the public and the people who are going to be affected are going to speak to you about this, you have to make sure they know that you even exist. I don't think that's happened here. To my knowledge, there was no information passed on through public channels, through advertising. I don't believe there was ever any advertising of the committee's meetings.

Because there's been such a limited discussion, you will not get a lot of people who are going to have a burning desire to speak to you or even have the knowledge that they should be speaking to you. I was advised when I originally talked to the clerk of the committee that if there were enough people who would submit, there might have been the chance of having the committee come up to the north, but it's a Catch-22. If

you don't come to the north, people feel there's little they can do. "Nobody cares what we think, so why should we even talk?" That was my first concern. I got that off my chest, so I feel a little better now.

First, I wish to state that I'm fully in favour of regulating paralegals and law clerks. It's been a long time coming. I always felt I was like a cork in the ocean, floating around, I had no place I could call home. I often thought—and I've even discussed it a couple of times with some of the people at the surveyors' association—"Jeez, maybe you guys could take the paralegals under your wing," because there's a section of them that fit naturally with land dealings. That's what they tend to deal with—land. They're the only people who can give a legal opinion about boundaries based on the Surveyors Act, and I thought, well, if most of the conveyancers and title searchers are dealing with that, maybe they should be under the auspices of the Association of Ontario Land Surveyors. I have to say there were a few people who were kind of receptive to that thought. Did it go anywhere? No, because they really didn't have any knowledge as to who to talk to.

But I do believe, as I said, that all paralegals, law clerks and legal assistants, conveyancers, title searchers, whatever you want to call them, both in-house and private independents, should be under the regulation. Any person, whether they're employed by a law firm, any lawyer, any legal department in some large corporation, an independent lawyer or a law clerk contracting with the public or some other law firm, they should all be subject to the same regulations.

But my problem is, who should govern? I believe they should be governing themselves. They have a society. They have tried through that society to govern. There have been other groups that have set up and also tried to organize. Unfortunately, neither group has any teeth. It does not have the backing of legislation like they do in the association of surveyors, the law society, the engineers or the medical profession. Without the backing of legislation they have no power, and it would be very difficult to protect the public if you don't have the power.

I believe that the people who are in those organizations fully believe that they would like to protect the public and their profession, and if you gave them the power they would probably use it adequately. I would go on to guess that if the law society or the association of land surveyors or the engineering society had no legislation backing them, they would be in the same position, with no power.

All of these discussions kind of reminded me of about 20 or 25 years ago, if you think back to when the doctors were in a big hard-fought battle with the nurses as to who would govern. I'm sure the doctors were saying that it all had to be done by the medical college. Then we heard that same voice again—the doctors—in regard to chiropractors: "The chiropractors have to be governed, and it has to be under the medical doctors." We heard them insisting that they were the only ones who would know how to govern.

Now we have the lawyers insisting that they're the only ones who can govern the paralegals in a way that will protect the public, and it's just the same stupid argument. There are boundaries. There are thought processes that the lawyers go through, just like the doctors went through, and there are thought processes that happen with the nurses and paralegals. I hate to use the comparison, but there is a strong boundary as to what they can do. Lawyers expect and think like lawyers, doctors expect and think like doctors, and the nurses know what they have to be governed by and where their boundary lines are. It shouldn't be up to the people who are dictating as to what their boundaries should be.

I don't know if I've clearly explained my thought there. The lawyers give the instruction to paralegals and law clerks. The law clerks—there's only so much that they can do. After that, it does become legal opinion. It does become lawyers' work. And quite often, that lawyers' work gets done in-house by the clerks. That shouldn't be happening but it happens, because the clerks in-house, if they like their job—they have to do their work, because the lawyer is in control. If the clerk doesn't do the work, then the lawyer just says, "I need somebody who can do this. If you're not going to do this, I'll find somebody else." That's a problem. If the lawyers are controlling the clerks and the paralegals, then they have no protection. You have to also protect them, because they are part of the public.

The lawyers would have us believe that all of the paralegals are corrupt. If you follow their thinking, they can't find enough honest people to govern. Is that really what the Ontario Bar Association and the Law Society of Upper Canada believe? If they do, then the government made a mistake when they put me in as a lay counsellor. They made a mistake when they appointed many of the others as members of other boards throughout the province. I just can't believe that they would think there aren't well-meaning people within the paralegal society. They're just dead wrong with that. Most of the paralegals I've ever met are very knowledgeable, they're very capable and they seem to be honest.

The person I share space with is a paralegal. She's been around for about 12 years. She was originally a judge in Poland. Before that, she was a crown attorney there. She could be called to the bar in many other countries around the world, including the U.S. and perhaps even in Quebec, but she's had numerous obstacles put in her path by the Ontario law society. There are many others like her. I know through my association with her—I've had a number of times to contact and talk to a number of paralegals and law clerks from southern Ontario who were in the same boat. They came from some other foreign country and were called to the bar in those countries. Unfortunately, there are stumbling blocks put in front of them, and they end up working as, at least, a paralegal, as opposed to driving cabs—not that there's anything wrong with driving cabs for a living.

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When I read through some of the material that the OBA and the law society have put on their websites and by many of the other lawyers who have taken time to write something, they don't actually talk about wanting to govern the paralegals and the law clerks, but they do want control. If it's all about control, then I think there's something flawed in what they're doing. It makes me believe that there is an obvious conflict there, because it's not about public protection but it's more about control. And when you talk about public protection, I want to point out a couple of things.

The law society says it's all about public protection. Well, I've sat here and I've watched the legal aid fund get bankrupted by the lawyers. I'm not saying that the law society did it, but it was allowed. They knew it was happening, and where's the public protection in that?

I have seen a wholesale shift of the onus in land conveyancing. The major shift that has happened is that up until a few years ago, the purchaser was not at risk when he bought a piece of property. The vendor had to clean up the problems prior to the closing. At some point in time, when we started down the road with title insurance, there was a drastic shift, in that now the owner is no longer responsible for those problems; the onus has now shifted to the purchaser. Where was the law society in crying out about the foul in that? The public doesn't even realize that that's where the problem is. They haven't been advised as to where that's going and what that means to them. That's a huge problem and I see that time and time again, and I hear nothing but frustration when problems come up.

Where was the law society in protecting the public when Teranet was given a monopoly—I hate to say this one—by the provincial government in order to change our whole system of how we do registrations? Yes, it might be a little more efficient electronically, but the problem is in the methodology of the change. There are huge numbers of errors that have come up. The system will tell you no; I'm here working in the system, and I'll tell you yes. These problems are constant. There is not a week that goes by that we don't find some kind of a problem. The problem was brought forward at the Association of Ontario Land Surveyors, who did a task force on it. The task force presented to the land registry staff. At least the surveyors looked at it; the law society did nothing. The problem with this is that we've got flawed titles, we have flawed descriptions, and where's the public protection? You have to earn my confidence here, and I don't think they've earned the right to be that confident.

There are some very good people out there who would govern. I'm sure that, given the teeth in legislation, they would be just as effective, if not more effective. There have to be minimum standards for how you operate. I saw that in the surveyors' association. I see that in the engineering association. I'm not so sure I see that in the law society. I don't see a minimum requirement of what

you have to do on a file in order to be able to complete that file.

I was talking to a colleague the other day when I was telling him about a trial I was doing in small claims court, and he said, "Oh, I didn't know you did trials." I said, "Yes, I do." This colleague was a lawyer who's 40-plus. He's been out for a good number of years—a senior partner. He proceeded to brag to me that he was doing his first criminal trial—at 40-plus years of age, and he'd never done a criminal trial. If the law society wants to protect the public, should they not be protecting the public from lawyers who, through many years of change, have not kept up with certain areas of law? I think that's imperative. I don't think you should have people who aren't qualified doing it.

I do not do criminal work. Why? Because I just don't know enough about it. I used to. In the first law firm I ever worked for, I was in criminal court quite often on anything from a small traffic ticket to appearing, on one occasion, on an arson charge. That was back when the judges would actually hear you. I was there under explicit instructions from the lawyer. I was asking for the woman to be remanded and the crown and the judge wouldn't hear me. They listened, but they just didn't hear the argument. Two days later, she burnt the place down and she was on the same charges. We finally got her looked after for psychiatric observation.

Having said that, I wouldn't do that now because too much has changed, and I think that's the problem. You have to have some teeth in legislation. I do that because I believe that's the right thing to do. Sure, there are going to be some paralegals out there who would overstep their boundaries and maybe take on work they're not familiar with, but as I've just commented, there are lawyers out there as well who do the same thing.

In closing—I don't want to go on too long—I believe it's probably going down the right path. With the correct legislation, with the right kind of abilities given to the paralegal society, they could govern themselves quite well. I have to tell you that I'm not a member of that society. Unfortunately, I joined up with one of the groups that is no longer here and, for that, all I can tell you is, if I'm going to bet on a pony, don't follow me because you'll lose your money.

But I'm here to tell you, they're doing a pretty good job. They need some teeth in the legislation, but I really think the legislation has to be strongly looked at. We've got lots of examples out there of how various self-governing organizations can work. We've got them in place for surveyors, engineers, the medical profession, nurses and lawyers. Do it for the paralegals. Give them the right to be able to self-govern and determine how they should be operating. If it doesn't work, there are procedures in place to correct that. There are judicial reviews. The minister can order a full review of the operation. Have they looked after their problems? Have they dealt with complaints properly? The bottom line is, eventually if somebody really is upset or hasn't gotten what they feel is a fair addressing of the problem, there is

always the last resort: Take it to the courts. That's who could end up deciding, those few times that it ever gets beyond not being addressed. I do not believe it would not be addressed. I believe that people who are empowered to govern do so because they are empowered to govern and they will do it. I thank you for your time.

The Chair: Thank you, Mr. Tindall. We'll start with the NDP, Mr. Kormos. Monsieur Kormos has no questions. The government side? No questions, comments from them either, or from the official opposition as well.

Thank you very much. There are no comments from either of the parties, Mr. Tindall. Thank you for taking the time.

Mr. Tindall: Thank you.

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ABATIS PARALEGAL SERVICES INC.

The Chair: Next we have Dahn Batchelor, president of Abatis Paralegal Services.

Mr. Dahn Batchelor: Thank you, Mr. Chairman. I'll just give you a very brief background of my history. I started practising law as a paralegal in 1964. I think I was the first, because I never saw anybody else in a court but myself, other than lawyers. I have done thousands of trials over the years in family court, in small claims court, criminal court, traffic court and provincial offences courts, and also in landlord and tenant matters.

In 1969, the late Morton Shulman asked me to head a task force to study the problem of compensating innocent people and the Attorney General asked the task force to report to the Attorney General our findings. Members of the Legislature of all parties and lawyers, judges and professors attended the meetings and we recommended compensation for innocent people sent to prison, and that's now the law. In 1971, I was invited to speak at a national law conference in Ottawa and I recommended 24-hour duty counsel at police stations, and three months later that became the law. In 1975, I was invited by the United Nations to become an adviser to the UN on justice, and I've addressed the United Nations 23 times since 1975 and conferenced around the world. I had a conference in Bangkok a year ago April; a conference in Lima, Peru, last November; I was the keynote speaker at the second world congress on the rights of children; and next month I'm the keynote speaker for the second international conference on the rights of children in Europe. Next year, I'll be speaking in Barcelona.

I have studied criminal law at universities and I have a bachelor's degree in criminal justice, a master's degree in criminology and I will be receiving my doctorate in criminology in about three weeks. I was the person who brought the paralegal program to Sheridan College. I was one of the founders of the Paralegal Society of Canada and the Paralegal Society of Ontario.

So I have quite an extensive background in this field. I'm not going to read my entire report, which is 47 pages long, because I, like you, want to get home tonight, but I do want to bring up a number of factors.

For many years, there has been animosity between lawyers and paralegals in Ontario with respect to which areas of law paralegals can practise in. Charges were filed against paralegals by the law society, sometimes with success and other times without success. As a result, there has been confusion among the general public as to what paralegals can legally do, especially as it relates to the preparation of documents pertaining to wills, real estate, incorporations and divorces.

The law society, the general public and paralegals alike had reason to be concerned. There still wasn't any form of legislation that could govern paralegals and assure the public that it would be protected from dishonest and/or incompetent lay counsel. It is trite to say that this concern is shared by the majority of the paralegals in Ontario. They too cringe when they hear or read about paralegals who have brought shame and disrespect to their profession. They too demand that legislation be implemented so that those practitioners in their profession who have shown themselves to be unworthy of the trust given to them by the public can be turfed out of the profession.

Certain paralegals have tricked their clients into believing that they were lawyers when they were not. Others promised services after being paid but never provided the services. Some even were convicted of defrauding their clients of thousands of dollars through their scams. Many persons hung out their shingles, so to speak, without having been trained in law or even bothering to purchase legal textbooks dealing with the areas of law they claimed to be versed in.

On the website of the Attorney General of Ontario, there is an observation of what Mr. Justice Cory said in his report about paralegals. He said, in part:

"There are incompetent and irresponsible individuals claiming to be paralegals. Their misconduct is disgraceful, their actions mislead the public and disrupt the proceedings of courts, boards and tribunals.

"However, it is also clear that there are able, conscientious and efficient paralegals who provide a needed service to the public in a number of areas."

In support of the second sentence by Mr. Justice Cory, it should be said that a great number of paralegals have been trained in law by attending community colleges which offer courses in law and they and others subscribe to Quicklaw, the Law Times and the Lawyers Weekly and have purchased annual digests and other books published annually, such as the annotated Criminal Code, the Ontario Annual Practice, the annotated landlord and tenant laws of Ontario and the annotated Ontario Family Law Practice, just to name a few. Many subscribe to Quicklaw, which gives them access to millions of court decisions. Those who haven't studied law in community colleges have successfully practised law after having spent years learning how to do so the hard way, by virtually hands-on experience. Further, the vast majority of paralegals in this province have never been accused of any wrongdoings such as cheating their clients or anyone else for that matter.

No one disputes that there is a place in our system of justice for competent and honest paralegals. They fill that void that is left by lawyers, whose fees are often more than their potential clients in need can pay or, alternatively, whom Ontario legal aid has turned down for one reason or another. It is disheartening to watch accused persons or parties to criminal, civil, family court and landlord and tenant matters, to name a few, represent themselves and bungle their way through their court and tribunal trials and hearings. They are oblivious to the old saw that a person who represents himself has a fool for a client.

When the law society charged Maureen Boldt in North Bay for preparing simple wills, simple incorporations and uncontested divorces, the law society's own experts testified at her trial that those tasks are so simple, their own clerks do them. The independent paralegals of Ontario are not trying to steal business from lawyers. They realize that a great many citizens in Ontario simply don't have the money to pay the fees of lawyers, and for this reason, paralegals are filling in for the lawyers. It is far better to have paralegals assisting those persons than having untrained citizens trying to solve their problems on their own.

The question that comes to the fore is, why does the law society really want to embrace the paralegals, whom many lawyers have described in the past as rabble who are untrained, unsupervised, uninsured and irresponsible? After all, isn't the law society the bastion for members of a nobler profession? As far as many lawyers are concerned, opening the doors of the law society and inviting the paralegals into their hallowed halls is akin to Queen Marie Antoinette opening the doors of Versailles and inviting the unwashed Parisian rabble into her boudoir.

Obviously, if the independent paralegals are governed by the law society, this will solve the lawyers' problem of the paralegals infringing on what they claim as the sole territory of lawyers: the preparation of simple wills, real estate documents, uncontested divorces and simple incorporations. The law society will simply order them not to do it, and if they refuse to obey the dictates of the law society, they'll boot them out of their profession. Didn't something like this happen in Austria just before the Second World War? Is this not annexation without bloodshed?

Charging \$500 to prepare a simple Small Claims Court claim and \$1,000 to represent the client in that court is not going to entice potential clients into retaining a lawyer when the paralegal down the hall charges only \$200 to prepare the pleadings and \$500, at most, to attend the trial. If the lawyers wish to charge Cadillac fees to people who can only pay Chevy fees, they shouldn't be surprised at all that the next phone they hear ringing is that of the paralegal whose office is down the hall.

People who suggest that there isn't any antipathy between lawyers and paralegals per se are the kind of people who subscribe to the Flat Earth News. This author would be less than honest, however, if he didn't admit

that there are a great many lawyers in Ontario who recognize the worth of paralegals, and they often send potential clients who initially come to see them on minor matters to paralegals that they know, trust and respect in order to save their potential clients unnecessary expenses. These are the actions of lawyers who care about members of the public who need assistance but who can't pay the higher fees of a lawyer for assistance in dealing with minor legal problems.

What better way to deal with the paralegal question can there be for lawyers in Ontario than to incorporate the independent paralegals under the control of the law society? If that happens, the paralegals will be within the grasp of their old adversary, with no space in which the paralegals can wiggle to improve their lot.

The working group of the law society suggested in its report that a standing committee comprised of eight benchers, of whom three are lay benchers and the other five members of the standing committee are paralegals, should govern the paralegals. Would not the lay benchers who sit in on convocation meetings dealing with the affairs of the law society and its lawyer membership not find themselves in some form of conflict of interest as it relates to governing paralegals, who will always be in competition with lawyers, who are the ones who constitute the membership of the law society? What would happen, for example, if the issue of whether or not paralegals should be permitted to do uncontested divorces comes up for debate within the standing committee, and the five regular benchers remind the three lay benchers that when they were given their appointments as lay benchers to the law society, it was so that they could look after the interests of the lawyers who are members of the law society?

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Although this writer still doesn't like the idea of the governing body being under the auspices of the law society, the idea of having laypersons appointed to serve on the governing body of paralegals is a sound idea. If eight of the members of the standing committee were paralegals and three were laypersons specifically appointed to sit on the governing body of paralegals by the government of Ontario, the idea would have considerable merit and probably be acceptable to independent paralegals in Ontario.

The issue of whether or not paralegals are capable of governing themselves is no different than those issues that have been raised in the past for quasi-professionals. The College of Chiropractors of Ontario is the governing body established by the provincial government to regulate chiropractors in Ontario. Every chiropractor practising in Ontario must be a registered member of the college. They are not answerable to doctors. Midwives in Ontario are also recognized and certified by their own people. They are regulated by the College of Midwives of Ontario, and they too are not answerable to doctors.

Architectural technicians and technologists may work independently or provide technical assistance to professional architects and civil design engineers in conducting

research, preparing drawings, architectural models, specifications and contracts, and in supervising construction projects. Architectural technicians and technologists are employed in architectural and construction firms, in government and in other industries. They have their own regulations in Ontario and they govern themselves. Graduation from a two- or three-year community college program in architectural technology is usually required for architectural technologists. The Association of Architectural Technologists of Ontario is both a professional regulatory body and an advocate for the profession.

Engineering technicians and technologists use the principles and theories of science, engineering and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection and maintenance. Their work is more limited in scope and more practically oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control, inspecting products and processes, conducting tests or collecting data. In manufacturing, they may assist in product design, development or production. They are recognized as being separate from engineers.

There are paralegals who were former bank managers, senior police officers, criminologists, business men and women, and former lawyers who are quite capable of governing themselves. They don't need lawyers governing them, any more than chiropractors, midwives and nurses need to be governed by doctors. It's an insult to paralegals for anyone to suggest that independent paralegals are incapable of regulating themselves. Once the legislation is in, it's simply a matter of using the legislation as its guide. Initially, those who are chosen as directors, governors, benchers, whatever they may be called, can seek guidance from other regulatory bodies on how to operate their regulatory body. Many of the directors of the paralegal organizations are quite capable of running their organizations, and although there's a vast difference between running an organization and a regulatory body, paralegals can do it.

The real problem will be to find an appropriate way to choose who will govern the regulatory body. The first thing that would have to be done is to determine how many directors would be ideal. It seems that, working on the premise that there may be, as a minimum, 1,000 independent paralegals in Ontario, 11 would be an appropriate number to sit on a board of governors.

Would it be appropriate to have someone who only writes wills serve on the board of governors? Would this person understand the complexities of conducting trials? Should this person make a determination on whether or not a paralegal was incompetent with respect to trial procedures? Should an applicant who has only two years' experience in court be put on the short list? Should a litigator who knows nothing about writing a simple will be placed on the list? The law society doesn't have a problem with this because there are many benchers

running the society, but when only eight paralegals are on the board of governors, this can be a real problem. It seems to this author that there would have to be a standard set for the qualifications required to be a board member. The standard would include a minimum of five years' experience and a minimum of three areas of law that the person consistently practises in, including experience in trial practice.

The working group asked, "Should the proposed regulatory framework provide for the accreditation, grandparenting and licensing requirements in order to ensure that the Ontario public is served by properly educated and trained paralegals?" The answer to that question is moot since it's obvious that there should be accreditation requirements in the regulation or legislation pertaining to paralegals. The question that comes to the fore however is, what forms of accreditation are needed in order that the public isn't subjected to incompetent paralegals representing them? For example, should there be only one form of accreditation or should there be more than one?

Probably the most difficult issue facing us in respect to accreditation is the matter of what to do about those independent paralegals who have been practising both as court advocates and legal document preparers for several years. The issue is subdivided into smaller issues, all of which must be addressed. For example, how long must an experienced paralegal be in practice in the field before he or she can be considered for grandfathering? It seems at first blush that five years would be an acceptable time.

It is this author's respectful opinion that an independent paralegal who at least has three years of practice of law in the field and two years of study of law in a community college or university in which that paralegal was taught law, or four years in the field and one year of study in a community college, or an independent paralegal who has a minimum of five years of practice in the field without any formal schooling, should qualify as an independent paralegal who is eligible for grandfathering. The governing body can determine the method of how the standard for each applicant is to be applied and what evidence would be required to be submitted to the governing body with the application of independent paralegal for grandfathering, or alternatively, it can be embodied in the legislation itself.

Mr. Justice Cory in his report said on page 12:

"It is also very clear from the submissions that merely working as a paralegal does not necessarily demonstrate competence.

"However, it is my opinion that those who have practised as independent or supervised paralegals for at least two years prior to January 1, 2000, should qualify as 'grandfathers.'"

Unfortunately, the honourable justice naively believed that legislation was forthcoming shortly after he submitted his report.

This author respectfully disagrees with Mr. Justice Cory's submission that two years of practice is sufficient. Some independent paralegals are in court two or more

times a week; others, two times a month. It seems that if an independent paralegal is going to be grandfathered, especially as a litigator, he or she should have more than a mere two years of experience in the field. Allowing for two years of college, the independent paralegal should have at least three years in the field.

A great many paralegals who have practised law for many years and who have become quite competent in specific areas of law they practise in are against any proposal that should have them write exams in order to qualify as a licensed independent paralegal. Is it really necessary for an applicant for licensing to write an exam on Small Claims Court procedures when he or she has been practising in that particular area of law for five or more years? Some have practised regularly in the small claims courts for over 20 years. Some independent paralegals in the greater Toronto area serve as members of the Toronto small claims client advisory committee and are well versed in small claims court forms and court procedures. In some instances, they helped design the curriculum of the law programs for several of the colleges and teach law in those colleges. Must they take exams also? They are competent to create such programs and then teach law, and now they must take exams to prove their competency? That's bordering on the ludicrous.

Do independent paralegals who are disbarred lawyers and who now practise law as independent paralegals have to take examinations on law? This author knows of one such paralegal who has his master's degree in law and practised as a lawyer for many years and now teaches law at a community college. Should he really have to take exams to prove that he is competent in law?

What about retired police officers who have practised for years as court agents in traffic courts? Do they have to take an examination on traffic law? What about those paralegals who are paid \$70 an hour to act as prosecutors in traffic courts? Do they too have to take exams on traffic law to prove that they are competent in traffic law?

What about the paralegal who has prepared the documentation for more than 1,000 uncontested divorces without one complaint lodged against her? Does she have to take an exam on the preparation of court documents for uncontested divorces to prove that she can prepare these documents? What about the paralegals who studied family law at college and graduated in those law courses? Do they have to take another exam to prove that they understand family law?

The only reason that grandfathering of experienced paralegals is acceptable at this particular time is because many independent paralegals began practising law as paralegals long before college courses were available to them. However, as time moves on, there will be less grandfathering of paralegals and all paralegals will eventually be required to study law in community colleges or universities and pass their exams in those institutions of learning before they can apply for a licence to practise law as independent paralegals, and that being

as it will be, grandfathering of paralegals will eventually become unnecessary.

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The answer of who will prepare the exams is so obvious, it almost becomes unnecessary to ask the question in the first place. The exams should be prepared by the colleges that teach law to paralegals. There should be at least 10 sets of exams prepared for each aspect of law, and each examinee will be randomly given a number which will determine which of the 10 exams he or she will be required to take on each subject. That way, no one will know the questions of each exam in advance, unless he or she peeked at each examination paper prior to being given the exam. The numbering can be switched every few months in order to ensure that there's no cheating; in other words, the chances of two people sitting next to each other during an exam taking the same exam are 10 to one.

Summary: There's more to deal with, but time doesn't make that possible with respect to the preparation of this brief. There can be no doubt in anyone's mind that there is a need for paralegals in our system of justice in Ontario. That doesn't appear to be an issue any more. As this writer sees it, there are three issues that must be resolved, however. They are regulation, governance and areas of practice. There isn't any need for further comment on these three issues from this writer since those issues have been dealt with in my brief.

What this all boils down to is not what is in the best interests of the government, the lawyers and the paralegals but what is in the best interests of those in need of legal assistance. There is enough need for legal assistance out there to keep all of us in the profession of law very busy without having to appear to the public as children fighting over scraps.

It will be in the best interests of the government, the lawyers, the paralegals and the general public if these issues can be dealt with expeditiously. All of the parties to this problem have waited far too long trying to get this problem solved. By us all working together, by contributing our ideas collectively, we can solve this problem, hopefully sometime in our own lifetimes.

I'm suggesting that if we must be governed by the law society, let them govern us for about five years and slowly wean us off the society and into our own governing body. I think that might be the way to solve this problem.

I'm sorry that Mr. Kormos didn't get a chance to hear me talk about some cat fights—

Mr. Kormos: I read your submission.

Mr. Batchelor: And you liked the cat fights, eh?

Mr. Kormos: I got all the way through to the end, all the way through to the CV, Mr. Batchelor.

Mr. Batchelor: Okay, thank you. Those are my comments.

The Chair: Thank you very much. Any questions? Government side?

Interjection: None.

The Chair: None. Questions from the opposition? Mr. Kormos.

Mr. Kormos: On page 31 is your reference to "disbarred lawyers." Whether or not they should have to pass new examinations, do you think people who aren't deemed ethically, morally, legally capable of practising law as a lawyer should be allowed to practise as a regulated paralegal?

Mr. Batchelor: I've been asked that question many times. I know three paralegals who are disbarred lawyers.

Mr. Kormos: I know several of them too. That's why I'm eager to see regulation of paralegals.

Mr. Batchelor: Yes, but of the three I know who were disbarred many years ago, one of them has been offered the opportunity to come back into the law society. He's decided to remain a paralegal. He's got quite a big practice. The other two, I've met and I've not heard of anything they've done that's wrong. I don't like lawyers who cheat any more than I like ordinary citizens who cheat and steal, but we have to give them an opportunity, if they have reformed themselves, to start again.

I was released from prison 42 years ago after spending 15 months in prison for giving shelter to a friend being looked for by the police. When I came out, I had nothing, no family, no job, no money, no home—nothing. I had to start all over again, but the public accepted me. I was a reformed individual, and I've achieved a hell of a lot. I'm the father of the UN bill of rights for young offenders, which is affecting the lives of millions of people. My work in Canada has affected the lives of a great many people. If we don't give people a second chance, we miss out on some of these people.

Mr. Kormos: I think lawyers who have done their time deserve a second chance to go into retail sales, to go into the building trades, to do any number of things, because some of the disbarred lawyers that I know were brilliant lawyers. I had occasion to work with them as a lawyer, but they're also thieves and liars and cheats.

Mr. Batchelor: I guess that raises an interesting question: What about the politicians who were also convicted? Do they get a chance to come back into politics?

Mr. Kormos: Mr. Zimmer?

Mr. Zimmer: The voters in British Columbia spoke conclusively to that issue.

Mr. Kormos: Yes, they did.

Mr. Batchelor: What, about the politicians or about lawyers?

Interjection.

Mr. Kormos: And the Senate isn't elected, but so many have ended their careers in prisons of various sorts.

Mr. Batchelor: I quite agree. I've been a member of both the Ontario and the Canada organizations. We studied this problem very carefully, and we realized that if a disbarred lawyer, for whatever reason he was disbarred, gets back on his feet and starts again and he's acting properly and honestly, I don't think we should tell him, "You can't do this."

Mr. Kormos: I think they should be encouraged to run for politics.

Mr. Zimmer: What would you say to the issue of a suspended medical doctor practising as a vet?

Mr. Batchelor: If that's approvable, then doesn't a suspended lawyer have the right to practise as a paralegal?

The Chair: Thank you very much.

Mr. Batchelor: Thank you, ladies and gentlemen.

The Chair: This committee is recessed until 1:10 this afternoon.

The committee recessed from 1206 to 1314.

MARSHALL YARMUS

The Chair: Good afternoon, folks. We're resuming our hearing this afternoon and our first presenter is Marshall Yarmus. This will be a 20-minute presentation, Mr. Yarmus, and you may start any time.

Mr. Marshall Yarmus: Thank you for letting me speak. My name is Marshall Yarmus. I just wanted to give you a bit of my background. I'm a paralegal. I've been practising for 10 years. My main specialties are Small Claims Court and the rental housing tribunal. I am the vice-president and director of communications for the Paralegal Society of Canada, and am also a board member of the Paralegal Society of Ontario.

Schedule C of Bill 14 deals with regulation of paralegals and that's the area I'm going to touch on today. Currently, paralegals provide a number of different services to the public and small businesses at a cost less than lawyers charge. Those services include representation in courts and tribunals, and preparation of documents for people where no specific act prohibits the preparation of these documents.

The public is well served by paralegals, who are able to offer services which lawyers either do not want to do or where specialization in a particular service allows paralegals to offer the service more efficiently, of better quality and at better prices than lawyers who offer similar services.

As a board member of the Paralegal Society of Canada and the Paralegal Society of Ontario, I have had the opportunity to study schedule C of Bill 14. I have spoken to paralegals and media across the province about the wording of this schedule. I've had the opportunity to meet to meet with Mr. Zimmer, who is my MPP, and I've met with staff at the Law Society of Upper Canada.

I have found numerous problems with the way in which schedule C was drafted. I will go into detail about how the legal services provision committee cannot make unbiased decisions about how paralegals will be regulated by the law society.

It is my submission to this committee that schedule C of Bill 14, as it is written now, cannot work. The cost to the public, who have chosen paralegals for over 30 years, will be dramatic. Unless schedule C of the bill is removed and completely rewritten or unless paralegals

are given are the right to self-regulate, the people of Ontario will suffer.

There are better ways to regulate paralegals, ways that do not include handing them over to the law society. I submit to this committee that schedule C of Bill 14 is so flawed that it cannot proceed to third reading unless or until a complete rewording of the bill is performed.

The flaws in schedule C dealing with law society benchers: Section 10 of schedule C states, "The benchers shall govern the affairs of the society." Sections 15 and 16 discuss the composition of benchers to be 40 lawyers and two paralegals. If paralegals are to be regulated by the law society, they need to have equal standing at the table where the affairs of the law society are decided. There is no provision in Bill 14 that the composition of the proportionate number of benchers will ever be revised. With 40 lawyers and only two paralegals as the permanent composition of the law society benchers, it sends a clear message that both the government and the law society do not think of paralegals as equals. Paralegals are being told that they will always be token players at the table of the benchers who run the law society. Whatever the lawyers decide is in their best interest goes, because paralegals will never have equal numbers at the table.

If we were talking about token representation given to an ethnic minority or women or people with disabilities or any visible minority, that would never be acceptable today, in 2006. I state that it is unacceptable here.

Regarding the legal services provision committee: Section 25 of schedule C states that the legal services provision committee is responsible for the regulation of persons providing legal services in Ontario. The committee consists of five paralegals, five lawyers and three lay benchers.

Where do these 13 people come from? Section 25.1(6) states that the five lawyers and three lay benchers are appointed by Convocation on the recommendation of the treasurer. The majority of members of the committee will probably decide all the bylaws on how paralegals will be regulated, and what areas of practice they will be allowed to continue to perform is decided by Convocation, upon the recommendation of the treasurer of the society. The treasurer of the society is Gavin MacKenzie. I say the majority may decide, as there is no provision in the bill on what quorum will be. Will paralegals be required to be present to make quorum? How many paralegals? These questions are not answered.

1320

It would be nice if Convocation and Treasurer Gavin MacKenzie had an open mind about how paralegals were to be regulated. They do not.

The Toronto Star article dated April 18, 2006 stated:

"Paralegals will be limited to working in small claims court and on things like traffic cases and workers' compensation cases. Once training standards are better established, services could be expanded, MacKenzie said.

"For now, they won't be allowed to do things like simple land transfers or divorces—services paralegals

openly advertise but which the law society says they can be prosecuted for performing."

The law society task force prepared a report to Convocation on September 23, 2004. They're basically saying the same thing, that the status quo will stay, and this is what Convocation adopted. The initial five paralegal members will be selected by the Attorney General in accordance with clause 25.2(2)(a). Again, it would be nice if the Attorney General, Mr. Bryant, had an open mind about the areas of practice that paralegals will be allowed to perform if Bill 14 is passed. The Attorney General has spoken on the subject. He has provided speaking points regarding areas of practice and other areas:

Issue: What are the services that paralegals currently offer and would they continue to be permitted areas of practice under a new regime?

Response: Paralegals currently operate unregulated in Ontario. The services that paralegals are currently legally permitted to offer include advice and representation in small claims court matters, traffic infractions and other provincial offences and tribunals. Paralegals would continue to provide those services that they are currently authorized to provide.

So again, both the treasurer of the law society and the Attorney General have spoken, limiting the areas of practice rather than expanding them, and they are the people who are actually going to put the 13 people on this board.

Who is the Attorney General going to select to be the five initial members of the legal services provision committee? One would hope it would be either board members of respected paralegal organizations—or based on their recommendations—such groups as the Paralegal Society of Ontario, the Paralegal Society of Canada, ALDA, the Institute of Agents at Court. However, section 25 allows the Attorney General to select whoever he chooses, without a requirement that the selections be based on information from these groups. Do you think the Attorney General might select five paralegals who go along with statements made in the Attorney General's speaking points?

Injunction: Subsection 26.3(1) allows the law society to apply to the Superior Court of Justice to obtain an injunction to stop a person from doing what the law society views as unauthorized practice. Above subsection (2), in bold, it states, "No prosecution or conviction required." The government is giving the law society, not the crown or the Attorney General's office, the power to put somebody out of business based on suspicion of an offence, without ever laying charges or obtaining a conviction. I thought this was Canada. I thought this was 2006. We do not take away a person's livelihood based on suspicion or innuendo without the person being charged, let alone convicted of an offence. We certainly don't give that power to the law society, which, if the bill is passed, would be our regulator. As regulator, they owe a duty to everyone to protect them from unjust treatment. For years the law society has ruled with an iron fist,

prosecuting anyone they deem to have violated section 50 of the Law Society Act. Now the government is giving the law society the power to avoid the time-consuming and costly procedure of proving facts in a court of law. That is unacceptable to me and it should be unacceptable to all the members of this committee.

Compensation fund: Schedule C clause 51(5.2)(b) limits money paid out of the compensation fund to an injured party due to a dishonest paralegal to funds paid in by paralegals only. The money is paid out based on decisions of Convocation, where again there is an overwhelming imbalance of lawyers to paralegals. If the law society were to be the regulator of paralegals, one would think that there would not be a segregation of compensation funds paid in by paralegals versus lawyers. There will be additional administrative costs that would be wasted, and it will do nothing to alleviate paralegals' concerns of having the law society be their regulator. I can see paralegals' contribution to the compensation fund being much higher than lawyers' at the beginning, if Bill 14 were passed, to compensate for there being no surplus in the fund.

Review and report by the society: Subsection 63.1(1) allows for a review of paralegal regulation after five years. An unspecified portion of the report will be authorized by the legal services provision committee. There is no provision for a paralegal to report to the Attorney General. There's no provision for a sunset clause allowing for self-regulation, which virtually all paralegals want. There is no provision that the Attorney General of the day will be required to act upon the report.

The Courts of Justice Act: Subsection 104(1) proposes an amendment to section 26 of the Courts of Justice Act, dealing with representation in small claims court. Currently, section 26 allows anyone to represent a party in small claims court. The representative is assumed to be competent, unless during a hearing the judge finds that they are incompetent. The judge can disqualify them. The proposed amendment allows a person authorized under the Law Society Act to represent a party, but also allows the court to exclude a person not licensed under the Law Society Act, if the court finds that the person is not competent to represent the party. So if I were to choose not to go under the regulation by the law society, under this definition I would still be allowed to represent a party in small claims court. Since I am familiar with the small claims court rules and procedures, I would still be deemed to be competent to represent people in the small claims court.

What is missing? The areas of practice that paralegals are allowed to offer must be in the bill itself, and not to be decided by the legal services provision committee, subject to approval by Convocation. As members of provincial Parliament, you are accountable to the public at election time. The law society is not accountable to the single mother applying to family court for child support or the injured worker who has been denied WSIB benefits.

Once the law society is given the ability to set its own by-laws, they can just as easily change them tomorrow. A regulation is easy to change without much public input or knowledge. When areas of practice are enshrined in the bill, it will be much more difficult to change.

In summary, schedule C, as it's currently written, has too many problems with it: with what is included, what is not in there and the wording to allow it to be brought to third reading. It must be removed from the legislation. Either start over from the beginning, or the government should adopt our self-regulation model that the Paralegal Society of Ontario has provided, as each expert that governments over the years have recommended.

Paralegals are not opposed to regulation; they are opposed to regulation by the law society as set out in this bill. There is a conflict of interest in the law society regulating paralegals. There is a problem when a regulator is forced upon a group who has specifically said over and over, "We do not want the law society as our regulator."

Thank you.

The Chair: Thank you very much. We've got a couple of minutes for each side, beginning with the official opposition.

Mrs. Elliott: Mr. Yarmus, you have indicated that you believe that areas of practice should be enshrined in the legislation. Do you just have any general comments that you'd like to make concerning what you think should be included and what, perhaps, should not?

1330

Mr. Yarmus: I would state, in a general sense, that anything that paralegals currently advertise that they do, anything that they've been doing for at least five years, should be allowed unless the law society can prove it's not in the public interest. That would include family law, uncontested divorces, wills, estates, any of these things that the law society and the Attorney General have stated should not be part of this bill.

Mr. Kormos: Yours is a coherent and articulate presentation, with points well made.

I don't know if there's anybody here—perhaps Mr. McMeekin—who was a member when the Legislature regulated the social work profession. Those were BSWs, MSWs. The community college social service graduates—and if you don't mind, I'll say they are to social workers what paralegals are to lawyers—were angry, frustrated, disappointed, and had their noses out of joint that they weren't going to be allowed to be members of the college of social workers. I understand your point, although I'm not sure that the articulation of lawyers as being competitors of paralegals is necessarily an accurate one. It has been a long time since I practised law, but I remember referring a whole lot of clients to some very competent paralegals, POINTTS among them, when I was a lawyer, because there was certain stuff—again, it has been noted already in these hearings that the lawyers are going to have to charge far more than what the client can bear etc. Why would community college social service graduates be eager to be part of a broader college of

social workers and regulated by them, yet paralegals would not want to be considered a part of the legitimate, regulated, broader legal community? Isn't there some real potential there to acquire some status and credibility, when some of your colleagues—and I've watched some of them in any number of arenas—have gone out of their way to embarrass your profession? Do you understand what I'm saying? Lawyers have done the same to the legal profession, right?

The Chair: A very quick response, please, so we can get to the government side.

Mr. Yarmus: I think it's because the law society isn't viewed by the public as a great regulator. They have so many disbarred lawyers, so many disciplinary hearings. They can't deal with their own people, so I don't think they can deal with the paralegals.

The Chair: Any comments or questions from the government side?

Mr. Zimmer: Thank you very much for your very careful and articulate presentation. As you've said, we've met, I think, both at the Attorney General's office, in your capacity with the society, and privately, as a constituent. Thank you very much for your presentation.

The Chair: Thank you very much.

We're having some problems connecting with our next presenter, so we're going to skip to Mr. Arthur Jefford. Mr. Jefford is not here.

MUNAWAR MERCHANT

The Chair: Next, we have Mr. Munawar Merchant. Good afternoon.

Mr. Munawar Merchant: My name is Munawar Merchant. I'm a CGA and a member of the Paralegal Society of Ontario. I am basically a tax practitioner, because I'm a CGA. I've had 30 years of experience as an auditor, manager, section manager and division manager for Revenue Canada. In the last three years, I've basically been working in tax. I've done very little paralegal work. I've done some kind of paralegal work ever since I joined the social committee in 1974 and helped people in the community solve problems.

Today my presentation is going to be more philosophical and not based on the strict legislative things about paralegal regulations. I'm trying to present philosophically why paralegals should be allowed to practise.

I'll start by saying that Canada is a country known around the world for its fair play. It presents itself with honesty, magnanimity and conducts its business with professionalism.

What is professionalism? To answer that question one should ask: What is a profession? A profession is a calling or line of work wherein the practitioner of the profession provides relief to the population in areas of health, law and finance, just to give you examples. Thus, a doctor aids the sick, a lawyer the person who may be in breach of law or seeking justice, and the accountant is the person who can advise you on your financial affairs.

Doctors come in many categories but there are two main categories, namely physicians and surgeons. It was not always so. There were only physicians. Surgeons were regarded as un-professionals, because their trade evolved from hairdressers or barbers who did manicures and pedicures and ultimately attended to corns and calluses on people's feet. In fact, surgeons were held in such low esteem in the UK that surgeons were addressed as "Mister So-and-so" and not as "Doctor." Yet today, 50% of medical treatment is surgical.

There are many branches of medical practice. We have physiotherapists and chiropractors, chiropodists and reflexologists. They all practise a form of medical care that a physician could or would. All support medical services and are helpful and useful in their own way, and very beneficial to the population.

I suffered from migraines for 25 years and attended every physician. Ultimately, four meetings with a reflexologist did the thing. That was in 1992. I have not suffered from migraines since then—not even a headache—until I heard of Bill 14.

Take the case of paramedics who attend to people who are involved in accidents or challenges that require 911 help. Who would really like the College of Physicians and Surgeons to curb the paramedics? Paramedics supplement and support medical work just as paralegals supplement and support the work of lawyers.

Chartered accountants' work is supplemented by bookkeepers. Then we have other branches of accounting, like CGA and CMA, that were bitterly opposed by the CAs. After all these years, CAs have recently even tried to merge with the CMAs. CGAs still cannot approve all corporate financial statements, except in British Columbia, in spite of uniform training. So what it boils down to is experience.

I am a CGA who served the Canada Revenue Agency for over 30 years and have run my consultancy in Ontario for the last 30 months. Working with Revenue Canada, I learned a lot about all kinds of legislation other than tax law. As a member of the Paralegal Society of Ontario, I had great success at Ontario disability claims and affordable housing claims.

Paralegals have worked in the field of family law, housing, immigration and traffic law cases with great success. They have served the community by providing services that are affordable, and in areas where legal help is hard to get at affordable prices.

As a member of PSO, I am here to voice my opinion on Bill 14 with the following comments: Paralegals serve a very important role in the law of the province. Paralegals provide services in very many areas where lawyers' services may not be available. Consequently, the work of paralegals is for the most part not in conflict with lawyers.

Paralegals have their own regulations for their members. This includes disciplinary procedures.

The government should realize that most paralegals do not support Bill 14.

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The paralegals' parent body has been insisting on insurance and is in favour of the creation of trust accounts in a paralegal practice wherever the type of practice demands.

The law society, as far as I'm concerned, has not demonstrated that there are any compulsive reasons why paralegals should come under the aegis of the lawyers of the law society.

Members of the paralegal society have practical experience and expertise in many areas of law, such as taxation, family law and traffic laws.

I'm sure there are paralegals doing wrong things, but so are there lawyers who are disbarred.

For the above reasons, I would like you to know that Bill 14 will do nothing to help society and/or its ordinary citizens.

As a paralegal, I would not venture into an area where I lack expertise. I would get help from a member of the Law Society of Upper Canada, just as I would resort to a tax lawyer where one is needed in my cases with Revenue Canada. Most paralegals I know would do the same.

I'm not opposed to any paralegal taking law courses at a recognized college. As a matter of fact, those who have not, should. But those who are in practice should not be restricted just because they have not yet taken the course. My suggestion is that they should be allowed to qualify through the approved paralegal courses available at community colleges and given, say, three to five years to so qualify while allowing them to continue with their practice.

Not allowing paralegals to function, through the introduction of Bill 14, would be grossly unfair and akin to the College of Physicians and Surgeons of Ontario banning physiotherapists and paramedics or the CICA putting such a curb on bookkeepers that qualified accountants themselves would be at a disadvantage.

Those are all the reasons I have.

The Chair: Thank you very much. Mr. Kormos?

Mr. Kormos: I appreciate very much your participation. I understand your position. Thank you kindly.

The Chair: The government side, questions or comments? None. Opposition?

Mrs. Elliott: No, no further questions. Thank you.

The Chair: Thank you very much.

Is Mr. Arthur Jefford here? Not here.

ANGELA BROWNE

The Chair: Angela Browne. Good afternoon.

Ms. Angela Browne: Hi. Hi, Peter. How are you doing?

I'm sure all of you have seen one of these. This was a submission that I made. Good. It's a good read. I'm just going to summarize some of the key points that are in it.

Good afternoon, ladies and gentlemen of the committee. My name is Angela Browne. I'm a practising paralegal from the Niagara region. I specialize in areas

like Small Claims Court, disability, human rights and employment claims. I do a lot of tribunals; I do a lot of travelling throughout the province. I've been doing this for 15 years, and I feel that Bill 14 is putting my career on the line, if something already hasn't done so.

Basically, I hope you have an opportunity to review the brief that I've written, because it goes into more detail than what I'm going to be saying today. I'm trying to be a little bit more academic in the brief than what I'm going to be presenting here as to why I think it's important that any notion of the Law Society of Upper Canada governing the province's paralegals should be put to a stop now.

First, I want to tell on a few companies. I think maybe some people from the law society might be here and maybe some of the companies could start being prosecuted for the unauthorized practice of law.

My bank, TD Canada Trust—I hope the law society representative or anybody here can write it down—has a new department that advises people on estates, trustee-ships and even will planning. This is carried out by specialized financial advisers who have the training to do this. I have yet to see the law society haul my bank into court for unauthorized practice of law.

Many large accounting firms, even a few smaller ones, offer business consulting services, which may include incorporation, shareholders' agreements and maintenance of minute books, among other things. It will be a slim-to-nothing chance that we will see the law society haul any of these firms into court for unauthorized practice of law.

Social workers—I've seen many of them serve as "advocates" working at agencies—have no idea or concept of law. I've seen them at the tribunal attempting to represent people. They have no idea, yet they're not going to be hauled in for unauthorized practice of law.

Real estate brokers and consultants: Many arrange purchases of property; some even help with mortgages and sell title insurance. It will be a cold day in hell before we see these people put under attack in the same way paralegals are. Other financial consultants—the same.

How about a publishing company, Self-Counsel Press? write it down. They publish many self-help guides for people, ranging from do-it-yourself divorce, incorporating your own business and selling your own home, things that many uneducated laypeople are told they can do for themselves, and will do for themselves, many of them quite competently, thank you very much, and they will not speak to a lawyer about it, while trained paralegals, even if we help to fill out some of the forms that these books provide, are guilty of unauthorized practice of law.

Go ahead. I said it. I referred to a number of companies and professions that are practising law without a licence. Maybe the law society can regulate us all and we can all be one big, happy family. But that's not going to happen—you know it and I know it—because there are acceptable forms of competition in the legal industry and unacceptable forms of competition. Paralegals, unfortunately, are the only form of unacceptable competition.

Why? Some people will not go to lawyers. In the law society's own environmental scan, it paid strategic counsel a handsome sum of money a few years ago to position itself for the Cory hearings.

People go to paralegals for all sorts of reasons: The same service is more expensive for lawyers to provide than for paralegals; the service is considered a minor matter by the consumer, feeling it's too small for a lawyer to deal with; many paralegals are experts in their own areas, i.e., people will come to me for disability, human rights and employment law because they couldn't find a lawyer who could do what I do. I have a very high success rate, even higher than the clinics in many areas of my disability representation.

Many areas of law are also not profitable for lawyers and therefore not provided by lawyers, like WSIB, ODSP representation and CPP representation. They don't do it; it's not good enough for them.

Buried and ignored by the legal profession but inside this same expensive, environmental scan, again paid for by the law society, it was reported that only 16% of the 200 paralegals they interviewed claimed only a high school education or less; 84% had at least college; in fact, 60% had university degrees, with a third having graduate school. At the same time, 58% carried some form of liability insurance. These numbers are much greater today as people graduate college and join the PSO, because we require people to carry liability insurance or else they just don't get in. At the same time, 71% said they felt regulation of paralegals was necessary. However, nearly a quarter interviewed at the time felt that regulation by the law society was a bad idea; even more feel that way today. I know only a small handful of paralegals across the whole province who would even say law society regulation is a good idea, yet the law society, along with their legal organizations that continue to lobby to them, still continue to refer to most paralegals as being "uneducated, uninsured and incompetent."

This province had the opportunity to hear from three very highly respected scholars and jurists on the issue of paralegal regulation. In 1988, the former Liberal government appointed Professor Ron Ianni. In his report, Professor Ianni stated that when the law society was consulted at the time, he relied on the law society's own submission that it would be an inappropriate body for the regulation of paralegals because of the potential for conflict of interest. The task force went on to recommend the law society acting in an advisory capacity only.

In 2000, the Progressive Conservative government appointed the Honourable Peter Cory, a former justice of the Supreme Court of Canada, to review the regulation of paralegals. In response to the Cory consultation, the law society's own paralegal task force stated that if the law society were to regulate paralegals, it should not have any say about areas of practice or any other contentious areas, because that would put it right back into the conflict-of-interest position it rejected back with Ianni.

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In the end, Cory said, "The degree of antipathy displayed by the members of legal organizations toward the work of paralegals is such that the law society should not be in a position to direct the affairs of paralegals." Cory then recommended against any government ministry regulating paralegals because sometimes we have to oppose the government in a legal action.

Professor Emeritus Frederick Zemans, a consultant whom the paralegals hired from Osgoode Hall, not only rejected law society governance but recommended an independent, self-governing legal services corporation, similar to Legal Aid Ontario. While it would require start-up funding by the province, its operations would eventually be funded wholly through the fees of paralegals.

The law society that felt that governance of paralegals was a conflict of interest in 1988 with Ianni and again in 2000 with Cory, if the society were to direct the areas of business for paralegals, suddenly, in 2004, agreed to take on this responsibility. From a political sense, what changed? Paralegals want to know what was offered in exchange for their sudden change of heart. If it was a conflict of interest then, why is it not a conflict of interest now?

There is no evidence that the law society will govern paralegals in the public interest. The law society is comprised of lawyers who represent lawyers in the governance, regulation and support of other lawyers. If the law society took over the regulation of paralegals and contentious issues arose such as the areas of practice, whose interests do you think the law society will protect?

More on this so-called public interest role in the governance of paralegals: Do you remember that back in 2002 there was a discussion paper circulated between the law society and the paralegal association determining practice areas and how we work with lawyers? Certainly not the first bullet hole in any paralegal advancement in this province, but the bencher Gary Lloyd Gottlieb, a sole practitioner in the city of Toronto, wrote in response to this paper in the *Law Times*. He said, "Instead of authorizing paralegals to engage in certain real estate deals, 'simple' wills, incorporations and divorces, the principled approach would be to deny them such privileges. It would be more cost-effective for the government to do something it hasn't done thus far, namely, vigorously prosecute paralegals for practising in these fields.... Instead of bestowing legitimacy on legal terrorists, the government should say to them, 'If you want to practise law ... go to law school, qualify for law society membership, and submit yourself to the regulatory scheme established for bona fide lawyers.'"

While Mr. Gottlieb's opinion may be passed off as his own, virtually all legal organizations, such as the Ontario Bar Association and the County and District Law Presidents' Association, among others, have been pushing the law society and the Attorney General to vastly restrict the areas of practice paralegals should be allowed to practise in, namely, the least profitable areas.

Dylan McGuinty, the brother of our honourable Premier, also a lawyer, has been urging his Ottawa colleagues to pressure their MPPs and the Attorney General, among others, to include a definition for the practice of law for paralegals in Bill 14 which would severely restrict what paralegals can do, such as only allowing small claims, provincial offences, traffic court and tribunals. Will the Premier listen to his brother or will he listen to common sense? I think you know the answer.

Further, the Ontario Bar Association has responded to the law society's report on sole practice and small firms by saying the following: "Paralegals have long had an unfair advantage over the target group in the areas of family law, real estate, wills and estates, corporate/commercial transactions and criminal law." I'd like to know where. "Criminal law clients usually have simple ... files and not murder trials. HTA work is now the virtual domain of paralegals. Paralegals are encroaching further into the areas of small claims courts"—do you hear that?—"will drafting and family law dispute resolution.... The loss of this work to paralegals represents a significant barrier to entry into smaller firms for prospective employees/associates who will receive their training in these files." The OBA further stated that "the regulation of paralegals would go a long way towards alleviating the competitive pressure for certain types of legal work which help to sustain small firm practices."

This isn't the first time we heard this. The law society itself, as they were supposedly consulting with the legal community, paralegals and others as to the framework for regulation and what it would look like under the law society, wrote, right in their 2004 consultation document, the following: "The task force recommends that paralegals not be authorized to conduct solicitors' work, primarily because there is no evidence that there is a scarcity of solicitors to provide services such as wills and real estate transactions.... Non-lawyers currently providing solicitor-type services are engaging in the unauthorized practice of law in violation of the Law Society Act." Keep in mind that the law society was asked by paralegal associations at the time to put a moratorium on prosecuting paralegals while this consultation was taking place, but it refused; hence, the lack of responses from individual paralegals, who only reported to their own associations that they were fearful in providing direct input on this matter. This manipulated silence of the many of us does not and will not constitute our agreement.

Even today, after the second reading hearings began for this bill back in April, before the act was passed, before the standing committee on legal services was formed and before convocation even met to consider the standing committee on legal services, Gavin MacKenzie, then the newly elected treasurer of the law society, opens his mouth and tells the Toronto Star that paralegals will be limited to working in small claims court and on things like traffic cases and workers' compensation claims, that

they will not be allowed to do things like simple land transfers or divorces—services paralegals openly advertise, but which the law society says they can prosecute for performing. Didn't the law society there sound so inviting of us paralegals, where we all just want to hop in the fray and work with them?

Since the Cory report, I've come to know over a dozen paralegals who have been prosecuted out of business by the law society. None of this had anything to do with protection of the public; the quality of the paralegal's work or their intent had nothing to do with any of these prosecutions. It was because the paralegal in question was advertising for divorces, wills or the like. It would have been different had the complaint come from a client; then I could understand the connection with the public interest. But virtually all of these complaints originated from lawyers.

This bill has absolutely nothing to do with protecting the public, or the Attorney General would have found another way to regulate us or empower us to do it ourselves. It has every intention to protect the legal profession, as too many of them are complaining that paralegals can do much of the same work they do for less.

But doesn't the law society also prosecute lawyers for misconduct, you ask? We read the papers—the Toronto Star, the Toronto Sun, the Globe and Mail. The Toronto Star recently did an exposé on the ineffectiveness of the law society to protect the public from bad lawyers. Apparently, they can't even tell the police that a lawyer is under investigation for robbing, cheating and stealing from people. Something in their own legislation protects this information from getting out. This particular story focused on a lawyer who stole \$3 million from clients, charities and estates, and who did not even get charged. Others who do get charge, even convicted, rarely go to jail.

Recently, another high-profile lawyer pleaded guilty to money laundering, to the tune of \$750,000, through a phony bank account set up by the police. According to the Toronto Sun, he told the undercover investigator that he was virtually untouchable, that he was friends with many judges, prosecutors and chiefs of police. Other lawyers are also being investigated as a result of the same sting.

You say the law society can disbar them? Maybe. But so what? They can always become paralegals. In fact, the one that scammed the \$3 million offers a wills and estates service. Another individual recently got admitted to the bar anyway, even though a complaint had been laid against her that years ago, in a high-profile inquest involving the death of her daughter, she willingly and knowingly destroyed key evidence. She told the admissions committee that she was sorry, and that she realizes now she shouldn't have done that. She is now admitted to practise law. The public is protected. Will this change under Bill 14? Probably not.

Through my 15 years or so of paralegal practice, I've come across a lot of pretty horrific stories involving

lawyers. Unfortunately, there's not a lot paralegals can do for them, at least right now, except write letters of complaint to the law society or, if it's a case within their jurisdiction, take over small claims or workers' compensation cases. In the last six months, I counted at least 23 separate cases of clients coming to me complaining about things that lawyers had done: missing timelines, therefore screwing up their workers' compensation case, where I've had to spend months and months trying to have it re-evaluated under their NEL just so that I'd have some decision that I could appeal. I've had cases where a lawyer signed on a contingency agreement and then insisted on getting his accounts assessed before the case was even over. Now he's after the client's house. I've had cases where a lawyer, who was starting with Small Claims Court for the client, hardly did any work, charged her \$3,000, and won't even give the file back to her so that she can give it to me to continue. She was told by the courts that she'd have to hire a lawyer to go to the Superior Court of Justice and put a motion forward to get her file. This is not access to justice, folks. This is pure bullyism and cronyism.

1400

According to the Toronto Star, which apparently got this information from the law society itself, 8,000 complaints are filed every year against various lawyers in the province. Less than 900 are ever referred to investigations and only a handful reach a disciplinary panel. On the topic of paralegal regulation, the Attorney General keeps repeating we've had 20 years to do this and nothing was done. Sure, this is when we were never given the legal tools to do it for ourselves.

The social workers formed their voluntary college prior to regulation and they acted in many ways that the current Paralegal Society of Ontario does. We even go after non-members, take them to court for recourse for paid fees and so forth when there's a legitimate complaint. But the government eventually passed a social work act and allowed the social workers to have their own governing body. Now, the same government is even working on a self-governing college for Chinese medical practitioners. No profession has been forced to be governed by its competitors other than paralegals. Why? On January 22, 2004, the Attorney General approached the law society and said so. If this was such a great idea, why don't we send George Smitherman to the next meeting of the Ontario College of Physicians and Surgeons to ask them if they'll regulate nurses, naturopaths, midwives, chiropractors and many others because they are offering medical services. Put all medical services under one umbrella. Let's see how the nurses, chiropractors and naturopaths etc. feel about that. That's why I oppose Bill 14.

I have many different recommendations and one of the things is—we can probably try to feed some of the recommendations into your questions. I don't know how much time I've got.

The Chair: You have one minute.

Ms. Browne: Okay. Maybe you can ask some questions. I've got a number of recommendations in here.

The Chair: Very quickly, if there are any quick questions or comments.

Mr. Kormos: One minute doesn't present a whole lot of time. Look, you've been an effective advocate for a whole lot of people for a long period of time. I have huge respect for that. You articulate the position very, very clearly. The interesting thing is, the government has yet to come up with a significant community of paralegals who do support the legislation. I know your point of view, I understand it.

I'm waiting, Mr. Zimmer. Are there paralegals who support the bill or not? If there are, we'd better hear from them pretty soon, because these people are acquiring some momentum.

Ms. Browne: Only a small number of them do. I'd say maybe 5% of our profession.

The Chair: Any questions, comments, quickly, from the government side?

Mr. McMeekin: Great presentation. Thank you.

Mrs. Elliott: Thank you very much. Understandable. That's great.

Ms. Browne: Okay. I'm just hoping that you guys would think about this very seriously, because this is something that would seriously impact on my career. Right now I'm living on my husband's ODSP and that is not a very good thing to do. I just want to be working. I'm sure this government wants people to be working too.

Mr. Kormos: In view of the fact that it's been over the course of—what?—three years now, it's the best the government can do? Shameful.

The Chair: Thank you very much.

Ms. Browne: Thank you very much. You'll be hearing more from me.

The Chair: Mr. Arthur Jefford? No.

JOSEPHINE COLE

The Chair: We're going to skip to Ms. Josephine Cole. Good afternoon, ma'am. You have half an hour.

Ms. Josephine Cole: Thank you. Good afternoon to all members of the justice committee. It's a pleasure to be standing here before you today bringing my many concerns and views with regard to Bill 14, the Access to Justice Act. Please listen as to how I came to oppose the bill and my many reasons why.

My name is Josephine Cole. I am neither a lawyer nor a paralegal. In fact, I am a mother of three who was severely injured in a motor vehicle accident thirteen and a half years ago. At the time of the accident, I was seven months pregnant with what ended up being my third and final child. This very serious accident that I was involved in occurred on March 9, 1993. Although I was injured under Bill 168 at the time, the horrid accident has cost my health and well-being, my family, and now ultimately my home. This was all for being injured in a no-fault accident.

I shall brief you on my horrid experience and I shall explain to you why I'm opposing Bill 14, the Access to Justice Act.

On the afternoon of March 9, suddenly and without warning, we were struck violently by the defendant, who was alone in a car. She proceeded through a stop sign at a very high rate of speed and struck my vehicle at the driver's side door. This impact sent me, my brother and sister, who were the passengers in my vehicle, 29 feet across the road and into the ditch against a snow bank. This serious accident that we were involved in caused each and every one of us serious and permanent physical and psychological impairments, including the defendant, from what I've learned years later.

A gentleman at the scene also witnessed this entire accident and came to our demolished cars. He immediately ran for help after learning that we were all injured and, especially, that I was seven months pregnant.

Nevertheless, to make a very long story short, the defendant was charged and convicted. As I was injured under Bill 168 at the time, I sued the defendants under the tort at the time due to the extent of my injuries. A counterclaim was served upon me in July 1995. The issue that has presented the most problems was that the defendants' policy limits were in the amount of \$500,000.

After 13 years of dealing with four different lawyers I have learned just how unjust the legal system truly is, and how lawyers' misconduct or alleged misconduct is lightly dealt with. Although I would love to, I cannot provide names of any of my lawyers due to the fact that my matters are still before the courts and that complaints have been filed against some of the lawyers with the Law Society of Upper Canada.

What I can tell you today is that the accident injured me severely the first time, and that over the past 13 plus years I have been injured again and again by the legal system that is supposed to keep us safe through the so-called administration of justice we have here in Ontario.

As I have continued to investigate these matters with the help of family, friends and a paralegal, I have been forced to defend myself against these issues since February 2005. I have fallen into a Kafkaesque labyrinth that only lawyers appear to know how to conquer, and because of this, I can only see that the system of justice which is supposed to protect my interests has totally failed to do so.

I have been particularly shocked at the apparent complicity that my own lawyers have had with the lawyers representing my insurance company in their tenacious battle to prevent me from getting what I am entitled to. Words cannot even begin to explain to you all the major physical and mental anguish I have endured in the past several years. To say that we have been through a nightmare is an understatement of it all.

Here is my story in brief: The first legal attorney consumed the first four years post-accident by being most complicit with my insurance company and by consenting to various unnecessary appointments and examinations

without my acknowledgement or my awareness. He further allowed this insurance company to access my medical file without my written consent or my awareness. Further, this lawyer represented all plaintiffs in this matter without acknowledging the possibilities of a conflict. Moreover, this lawyer assured us over and over again that he had issued statements of claim in the amount of \$1 million on each of our behalf. Therefore, I was shocked to learn more than 12 years later when my fourth and final lawyer withdrew that he actually only filed the claim in the amount of \$100,000, to keep us all within the defendant's policy limits of \$500,000.

What he did and what he said was deceitful and dishonest, which is a major reason we ended up having these major complications with our claims over the next 13 years. He also failed to protect me by not issuing a statement of claim against my insurance company for the SEF 44 endorsement underinsurance, given that he knew the defendants' policy was insufficient to meet the needs of all of us plaintiffs.

Despite the fact that virtually all of the medical reports that were conducted on my behalf or on behalf of the defendants, for that matter, cited that I was indeed permanently disabled, my own lawyer failed in providing me with proper representation. The insurer's own lawyer, in fact, stated at a discovery in February 1997 that he was in agreement that I met the threshold and was entitled to further benefits. However, my own lawyer intervened and after numerous discussions concluded that he was only able to propose to me \$1,200 to settle my entire claim.

After four and a half years of continuous battling with this lawyer for my rights, he realized that all had failed. A conference was arranged at his request for all of us plaintiffs to meet with his superior, who was one of the partners of this prestigious law firm in Toronto. During this meeting I felt severely manipulated and threatened. I was told that if I did not accept the settlement that they'd worked for achieving that they would let me go, because I was not accepting their good legal advice. Here I was also told that I could not pass the threshold, because I was neither a paraplegic nor a quadriplegic.

Why was I battling my very own lawyers to obtain access to my own rights? For all of this, his account was over \$28,000.

The second lawyer carried himself as being very reputable. I felt assured by his recommendations that I indeed was in better hands. He also presented himself as being knowledgeable and competent. I must say that he demonstrated the strongest stance of fairness and morality amongst all of the lawyers. He acknowledged the bad faith the prior lawyer had administered to us and was extremely sympathetic to our plight. This legal attorney promised us justice, and that it would be served and our faith would be restored with his trust. In short, he did not materialize what he promised to us. He continued to represent all plaintiffs once again.

1410

Despite the many potential areas of conflict of interest, he also failed to serve my insurance company with a statement of claim for the SEF 44 endorsement underinsurance. He failed to govern us in accordance to the law. We were told that the prior lawyer's bill would be assessed at the completion of this litigation. Years later, we learned that he did not agree to assess the account, rather to protect. This lawyer also went before the courts and had these matters transferred to St. Catharines from Toronto, all without my knowledge or consent. He further requested to consolidate these matters. How could the two matters be consolidated when one has myself, with other plaintiffs, against two named defendants while the other is only between my insurance company and me?

Following more years of emotional, consuming litigation, undergoing rigorous courses of rehabilitation and being treated and assessed by numerous physicians and treatment providers, only to conclude that I was indeed permanently and seriously disabled, I was placed on a Canada disability pension in October 2001 for suffering a severe and prolonged disability solely as a result of this accident. I was deemed disabled in April 1997, the date of my application.

While I continue to live with these debilitating injuries, from September 1999 onwards I have learned that there have been as many as nine adjournments and three pre-trials with regard to this matter. These matters continue to be adjourned over and over and over again on consent, but not from me. On a couple of occasions, this lawyer told us that the court was suffering severe backlogs and these adjournments were inevitable.

The second lawyer consumed another five years of our lives, which made the civil litigation more complex and disastrous. It is also important to know, but I am saddened to tell, that the bottom line is that this lawyer continues to suffer from severe addictions. These addictions not only cost him, but also cost us a great number of years. Years later, we have learned that it is he who was asking for these adjournments. It was he who failed in protecting us as his clients. He failed in providing us with our legal rights, and it also showed by entering our 10th year into this litigation. This retainer was also on a contingency fee basis, and ultimately this lawyer's firm served me with a statement of account, which is in excess of \$33,000, for his so-called services.

We retained a third attorney. Immediately, this third lawyer expressed how strongly he felt about these cases. Although there was much work to be done due to the negligence of the prior attorneys, ultimately he promised that he would be the one to take us to trial. He discussed our individual cases and how strong he felt they were. He expressed how each and every one of us should be compensated for our losses. Without hesitation, he stated that we definitely crossed the threshold.

This solicitor clearly explained the conflict of interest that we were in. He continued telling us how the first two lawyers were negligent for not suing our insurance com-

panies for the SEF 44 endorsement underinsurance and that that was the main reason for the delay in these matters. He also continued telling us that if the three of us plaintiffs did not stay together and retain him to defend all of these matters, then he would not be interested in any of the cases.

What baffled me was the fact that he explained this conflict that we had been in for many years and, on the other hand, he wanted all three of these cases all over again. For the sake of my brother and sister, and although I felt extremely weary of the situation, we did retain this attorney. Upon retaining this lawyer, I made it very clear that I did not want any more appointments, medical appointments, discoveries or mediations. At this point, I told him about qualifying for the Canada disability pension, so it was conclusive that I was deemed to be severely disabled.

In January 2003, this lawyer did serve my insurance company with a statement of claim for the SEF 44 endorsement underinsurance. A combined mediation was also conducted in June 2003. A settlement was reached, but within 24 hours after this approval in principle, it was declined by all plaintiffs, as allowed by the law. Although there was a combined mediation conducted on this day, this proceeding was solely between Josephine Cole and my insurance company. Although this third lawyer, his associate, my insurance company and the lawyer for the defendant in the tort claim proceeded in making us believe that this was a combined mediation and conducted it accordingly, I must tell you, to my grand surprise, the court files, court documents and mediator's report that I located within my court files confirm that this proceeding was solely between myself and my insurance company for the SEF 44 endorsement underinsurance. To say the very least, the mediator's report states that a complete settlement was reached at this mediation.

Correspondence in my possession that followed this mediation indicates that the defendant in the tort claim was not prepared to make any settlement offers until closer to trial. If all our cases were being settled on this day and at this mediation, then what trial would there have been? Since the defendant in the tort was going to put money down closer to trial, where did this money come from? No one else in this litigation had claims open with insurance companies or with my insurance, for that matter. Do we not have the right to know who put the money down and how much money was put on each of our interests? Do we not have the legal right to know what we are awarded for our losses as far as a settlement offer?

On many occasions, we requested to know what actual proposals or settlements were made. According to the court documents, this third lawyer definitely settled the action for the SEF endorsement underinsurance, but I did not receive a penny from the settlement.

This mediation was carried out primarily in secret, in another room, outside of our presence. At the very end of this day, this third lawyer narrated that after a very long

day of negotiating, it was his professional opinion that he finalize an appropriate amount of money on all of our behalves. This was supposed to be good, sound legal advice. Suddenly, he told all of us that our cases were not as strong as he'd told us all along. He further requested a \$100,000 retainer fee if we anticipated bringing these matters to court. Although we totally disagreed and told him to take these matters to trial just like he had promised us, he requested a retainer of \$100,000. At this point, this lawyer and my husband continued in a heated exchange. Ultimately, this lawyer told us that if we did not accept the settlement offer, we would have to find ourselves another solicitor because he would be removing himself from the record. The silence that broke the room once he made this announcement was unexplainable. The fear that overtook each and every one of us was overwhelming. I was experiencing once again the mental suffering that I had experienced for years.

We signed those documents. I requested copies of everything we signed, including the minutes of settlement. With substantial hesitation, this lawyer finally agreed to photocopy these documents, only with the assurance that we would not be reconsidering this offer. He persistently arranged with his assistant to have us meet at his office immediately the following day for the finalizing of these documents.

Nevertheless, on the following day, this law firm was notified that we had withdrawn the acceptance of this offer and that mediation had failed. We had not seen in one and a half years the communication that occurred within the following two weeks with this law firm. To make the story short, this lawyer not only suggested that he would reduce his legal bill substantially, from \$135,000 to \$30,000, only if we agreed to this offer, but he also contacted the mediator, who himself phoned us at home to try to convince us to work something out with the solicitor.

When all failed once again with this attorney, he began to threaten me and my husband about our future and our home. He promised me failure. He promised to make it very difficult for me to find another solicitor, all because this legal account was in excess of \$70,000. The promises that this attorney made me did, in fact, come true. These promises show that after three more years into this consuming litigation, he was able to access his account and execute a warrant on my property in excess of \$85,000. This, of course, is very contrary to the law—and after failing to comply with court orders.

The fourth and final solicitor that I consented to retain immediately consented to take my case. She also assured and promised me trial. It was made very clear that I would not be attending any more appointments, discoveries or mediations for this matter. Although she consented to take the case in July 2003, we did not sign retainers until September 2003. She wanted to familiarize herself with my case.

In summary, it took this woman one full year to obtain the files from the previous law firm. That third lawyer had hired himself an attorney and pushed motion after

motion in the courts to force my new solicitor to protect and prioritize his accounts, over and above all other accounts, including the solicitor that I had retained last. On July 6, this file was finally handed over by the courts.

I was also able to see how much control my third solicitor had over this woman. I also noted that she was doing the opposite of what she had promised me.

In July 2004, upon retaining my legal file, I requested to know who put the money from the mediation down in June 2003. After reviewing this file, she told me that this information did not exist in my file and that she had been refused this information on several occasions.

This woman refused to communicate with me following this meeting in July. The days turned to weeks and weeks turned to months. In October, after several telephone calls I had made to this office, this attorney called me back. During this conversation, she stated that there was an order through the courts that I attend another IME—independent medical examination—and another discovery, for that matter. I had attended several independent medicals, I had over 20 medical opinions on file, and I have also had three discoveries in total for this civil litigation. This motion was heard in Toronto in September 2004. The motion proceeded without any acknowledgement or awareness that she consented to this motion. I did not receive the quality of service a lawyer owes a client. She failed to inform me about this motion prior to deciding not to attend, nor did she discuss with me why and how she was going to consent to this particular motion. Does this lawyer not owe me at least the right to inform me and to allow me as her client to give her instructions as to how my case should be handled?

1420

During the time I was supposed to attend these unnecessary appointments, I experienced major setbacks. The medical documentation regarding my disabilities is in abundance. The hospital records confirm the findings. Doctors and specialists made my diagnosis and prescribed me the deadliest of medications to put me out of my misery.

This lawyer eventually deemed me uncooperative and removed herself as solicitor of record. She did not serve me pursuant to the rules of civil procedure. My documents were received through regular mail nine days following the hearing of this motion in Toronto.

Since I've been unrepresented since February 2005, I have learned that this fourth solicitor assisted the defendant's solicitors along with my insurance company to proceed and transfer our cases from Toronto to St. Catharines on a permanent basis for the many reasons known: Firstly, for the purpose of being in the defendant's own territory. Let me tell you that another master also granted this in a Toronto courthouse upon my very last solicitor removing herself as solicitor. Why would any judge or master grant this as an order, as she's removing herself off-record? She contributed greatly to this disaster herself, making all matters more difficult for me, just like she had promised. With great fear, she

proceeded to follow the orders from the third solicitor, and after resigning as my solicitor, she implied that the legal file that had been sent to her by the third solicitor was sent back to him as cited in a court order.

Nevertheless, since the removal of this fourth and last lawyer, I continued defending these matters as self-represented. From my experience, I can tell you that what I have learned in the past 19 months has been disconcerting at best, and I shall explain to you what I have experienced.

We have exhausted several lawyers who have only created this very complex legal disaster we are living in today. These several lawyers not only criticized and emphasized the bad faith of prior solicitors, they continued to contribute further to this disaster, ultimately leaving each and every one of us hopeless with outrageous legal accounts. Substantial damage has been created, and I must tell you that one is worse than the other.

Each of these lawyers has not always complied with court orders. The courts have proceeded to grant these lawyers' assessments of their accounts even though the retainers that we signed state that they were all to be paid only on a contingency-fee basis and a court order that the accounts be assessed after the litigation has been completed or the claim has been settled. Instead, the assessments were permitted to go ahead, and as a result of the one completed by my third legal attorney, the very same one who hired himself a lawyer, he was able to proceed through the courts and obtain a lien on my property in an amount in excess of \$85,000. I am no longer able to sustain my life-sustaining treatments through borrowing on my line of credit, as this lawyer has placed himself on the title of my home. The second assessment is in progress with the courts regarding the second legal attorney.

Despite the fact that these matters have apparently been consolidated and transferred permanently to St. Catharines, they have once again been moved to the Hamilton courthouse. When searching for my various court files, I found them in a completely muddled condition. Regardless of which courthouse I searched, whether it be Toronto, Welland or St. Catharines, many documents are missing from each of the files. I managed to copy one stamped and sealed order from the Welland courthouse to bring it with me to this assessment with regard to the third solicitor in Toronto only to find that the same document went missing the very next day out of Welland. Court officials are telling me that this is not supposed to happen, that these files are not supposed to be tampered with.

I wrote a letter to the Honourable Michael Bryant, making him fully aware of my experiences of 13½ years. In part, I must tell you, as I told the Honourable Michael Bryant—and pardon my expression—we surely do have one pathetic legal system. You should also be fully aware, just like I've already made the Honourable Michael Bryant aware, that this system has contributed greatly in assisting these lawyers by granting them all of their orders—each and every one of them that they've

demanding throughout all of these years, many without reviewing the legal documentation.

Please be aware that it is also with great disappointment that the Honourable Michael Bryant intentionally disregarded the facts and proceeded in letting an assistant deputy attorney general in the court division handle my complaints. Her response was totally insulting, because she advised me of what I told in my letters for her not to make mention of, which was the Law Society of Upper Canada and also the lawyer referral line. This was information that I received on February 11, 2005, during a meeting with our local MP, Rob Nicholson.

I decided to take it one step further and contacted our Premier, the Honourable Dalton McGuinty. At the end of March 2005, a correspondence of seven pages was sent to Honourable McGuinty. I went into further depth with the Premier. I anticipated a strong response, and my letter demonstrated that I was also extremely desperate for his assistance. Honourable McGuinty wrote me back. It was not only with grand disappointment, but I was in total disbelief at his response. It was unimaginable that he also referred me to the lawyer referral line with the Law Society of Upper Canada. Of course he wouldn't want to admit that there are some very serious judicial and legal problems.

I responded to the Honourable Dalton McGuinty's correspondence, and I asked him earnestly and humbly for some desperate decision. As an elected official, he would not be permitted to interfere in legal matters and wishes me success in resolving the situation.

In the second letter that was sent to the Attorney General, I also expressed my great concerns. The assistant deputy attorney general wrote me back with regard to her concerns, and she directed me to the Chief Justice of the Superior Court of Justice for my matters relating to the scheduling and assignment judicial duties and she further advised me of the Canadian Judicial Council, since they have a mandate to investigate complaints about the conduct of federally appointed judges. Nevertheless, this information that was provided from the office of the Attorney General to greatly assist with these matters was indeed appreciated. A correspondence of 39 pages was delivered by means of facsimile and Xpresspost, requesting a signature upon arrival. A copy of this very same letter, dated February 21, 2006, was sent to the Chief Justice of the Superior Court of Justice, the Canadian Judicial Council and the Law Society of Upper Canada, which regulates Ontario lawyers, just like I had been advised by the office of the Attorney General.

On February 28, 2006, a brief letter was received from the executive legal officer defending the Chief Justice, telling me that it was inappropriate to write directly to a judge with matters that are before the court. This legal officer also advised me to hire yet another lawyer to bring the appropriate court procedure and legal remedies, if any may exist in law to assist me, and he returned my letter of 39 pages.

Until this very day, I have not received a response from the Canadian Judicial Council with regard to this

very same 39-page letter that I sent; nor have I received an investigation that I had requested with regard to the government officials that I had based my many complaints upon.

Since I was especially directed to the law society, today it is loathsome to just say that after six days following my initial complaint letter of 39 pages to the law society, it intended on closing this entire investigation. It was no great surprise as to why I had been continuously directed to the law society.

From the first solicitor who began this disastrous path we continued to walk on and until the fourth and very last solicitor that I retained—I just cannot imagine that your officials would be directing me to yet another lawyer to attribute further to this already serious and very complicated matter.

It is also my understanding that to be considered honourable, one must earn his title, indicating eminence or distinction. Could you please explain to me how it is that not one of these three elected officials possessing these honourable positions was able to assist me or direct me to some form of justice other than the law society, if you want to consider this a form of justice?

Today, I can truly state that from my past and present experiences, I am most certainly opposing Bill 14, the Access to Justice Act. I feel the Attorney General should make some serious amendments in not only reviewing but also imminently revising this regulated system already governing lawyers. This regulated system that proposes now to govern paralegals does not deliver any justice with regard to whom they are already set up to govern. No matter how we try to seek justice through the law society, it seems to be more defending of its own. This is not justice, nor does this system offer any more access to justice.

These many lawyers take an oath to uphold the law. Paralegals are not governed; nor do I feel that they should be governed, especially by the law society, which has proven to me not to properly govern its own. Yet, if a criminal act is detected through the work that a paralegal provides, the paralegal gets reprimanded according to the injustice of the offence.

1430

There is also a blackened reputation that sequels the “professional misconduct” or “conduct unbecoming” that a minute number of paralegals demonstrate, yet the hundreds of complaints and hundreds of criminal offences that are performed every day by hundreds of lawyers on a yearly basis are kept hidden because of the protection that these lawyers enjoy under the Law Society Act, the very same law society to which these lawyers pay thousands of dollars on a yearly basis.

What is the purpose of regulating paralegals? Could it be perhaps that paralegals are most definitely capable of performing the duties of a lawyer but for a nominal amount of money in comparison to a lawyer? Are these paralegals destroying the image or denting the reputation that these lawyers have since they can perform the duties of a lawyer accordingly, or does the Attorney General

want to regulate paralegals so they may also be governed if the intent is there for professional misconduct? Perhaps it is very shameful for these lawyers, since many paralegals are gaining more respect and trust from the public for the duties that they’re able to administer.

Interestingly, Bill 14, the Access to Justice Act, will not be providing us any justice. In fact, it will be providing us injustice. The Attorney General should be intelligent enough to understand that there are single parents, students, low-income families, etc., who cannot afford to pay for the services that are provided by these lawyers. And although many of these lawyers should be following the tariff that is according to the years of experience they hold, most of them overcharge their clients without them knowing it.

The fees for the services that a paralegal provides are fees that are very compatible with the law clerks’ fees in tariff A of the solicitors’ fees and disbursements allowed under rule 58.05, part I, costs grid, that is demonstrated in the Courts of Justice Act. The fees range from \$80 to \$125 per hour. Let us not fail to consider that although these fees seem within an affordable range, for a single parent or a low-income family these fees are adequate. Let us take into consideration the fees of a lawyer for the services they provide. In accordance with the Courts of Justice Act, an attorney with less than 10 years of experience ranks from \$225 an hour on a partial indemnity scale to \$300 an hour on a substantial indemnity scale. An attorney with 10 to 20 years of experience ranks in at \$300 to \$400 an hour, and over 20 years’ experience it’s \$350 to \$450. These were the exact fees that I incurred from the various lawyers I have retained. Take a very good look at the services they have all provided for me. This must also be the reason that the law society does not assess the legal bills of lawyers. That is left to an assessment officer.

Now, what I would like to know from the Attorney General is, where would there be access to justice under these circumstances if Bill 14 is passed? How can any low-income individual pay for such legal services that are rendered at this cost? I am indeed in opposition to Bill 14.

It’s unfortunate that I must feel the way I do today, but I would like to credit the legal profession for that matter and I would also like to provide additional credit to the various judges and government officials who assisted in this very serious matter.

I would also like to sincerely apologize from the bottom of my heart to the minority of lawyers who truly do not deserve to be labelled as a “bad apples.” The very next time that you’re aware of one of your colleagues or associates working contrary to the law, thank them for tarnishing your reputation. Thank you.

The Chair: The time was right on. There’s no time remaining for questions and comments. Thank you very much.

Ms. Cole: Thank you very much.

The Chair: We will be having a short recess.

Mr. Kormos: Chair, if we're having a short recess, why don't we have Ms. Cole come back for five minutes? I'm seeking unanimous consent in that regard?

The Chair: Is there unanimous consent?

Mr. Kormos: Agreed.

The Chair: We don't have unanimous consent. We'll be recessing till 3 o'clock. Thank you very much.

The committee recessed from 1433 to 1503.

CANADIAN INSTITUTE OF MORTGAGE BROKERS AND LENDERS

The Chair: Welcome back. We're down to our 3 o'clock presentation, from the Canadian Institute of Mortgage Brokers and Lenders, and we have this afternoon Mr. Jim Murphy.

Good afternoon, Mr. Murphy. You may begin any time.

Mr. Jim Murphy: Thank you, Chairman. Good afternoon. My name is Jim Murphy and I'm senior director of government relations and communications for the Canadian Institute of Mortgage Brokers and Lenders, or CIMBL.

CIMBL has over 9,400 members across Canada, with approximately 60% of that total here in Ontario. CIMBL represents all facets of the mortgage industry including lenders, such as the banks and credit unions; mortgage insurers—Genworth and CMHC; and title insurers as well as mortgage brokers and agents across the province.

Research we've undertaken shows that at the end of 2005 there was over \$660 billion in outstanding mortgage credit in Canada, with roughly half of that amount here in Ontario. This total is expected to grow by a further 10% this year, 2006. Our industry helps Canadians and Ontarians meet their dream of home ownership.

CIMBL also has established an accredited mortgage professional, or AMP, designation as part of our ongoing commitment to increase the level of professionalism in Canada's mortgage industry through the development of educational and mortgage standards. Over 3,000 CIMBL members currently have their AMP designation.

The tremendous growth of our industry is also reflected in the fact that the government has tabled new legislation to govern and regulate our industry, at least the broker and agent side of the industry. Bill 65, the new Mortgage Brokers Act, has received first reading, and second reading commenced on June 14. It is a piece of legislation that was introduced by the Minister of Finance in February and is one that we support and would like to see passed to update the rules and regulations governing our industry. There hasn't been change for some 30 years. We expect the legislation to complete second and third reading during the upcoming legislative session this fall.

The main intent of the legislation is to increase professionalism in our industry by raising the bar on several important standards such as disclosure to borrowers and education standards. Both of these measures, along with others, will directly benefit consumers across the pro-

vince, who are the beneficiaries of the products provided by our members.

CIMBL has concerns with Bill 14, which is before you today. I have included in our package, which I hope you've all received, copies of correspondence we've had with the government on the legislation, both public servants and the Attorney General.

Earlier this year, on January 19, we wrote to the Attorney General expressing our concern with the provision of legal services as defined in the paralegal section of the legislation under subsection 2(10) on subsections 1(5) and (6) of the act. Specifically, our concern rests with the definition of legal services, subsection (6), which states the following:

"Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following: ...

"2. Selects, drafts, completes or revises,

"i. a document that affects a person's interests in or rights to or in real ... property."

I have provided emphasis in italics for that particular part of the legislation.

As we stated in our letter, we believe this definition to be very broad—in fact, we have a legal opinion to that effect—and would capture regulation of mortgage services provided by our members on a daily basis across the province. Lawyers or paralegals would have to complete mortgage documents and applications.

Further, as a separate but related issue, the Law Society of Upper Canada would have the ability to regulate our profession. Our members are already regulated in Ontario—and the new legislation, Bill 65, expands on this—by the Financial Services Commission of Ontario, FSCO. Such a scenario or proposal is unacceptable to CIMBL and we believe, from our discussions with the government, that this was not the intent of the legislation.

CIMBL's concerns were and are shared by other groups, many of which you will hear from during these hearings, some of which you have already heard from. Earlier this year, CIMBL joined a coalition of like-minded associations and professional organizations that include the Ontario Real Estate Association, the Canadian Bankers Association, the Insurance Bureau of Canada, the Canadian Institute of Actuaries, the Federation of Rental Housing Providers of Ontario and others, including the land title insurance industry. A copy of the letter that we sent as a group to the Premier, dated February 13, is also attached in the package that has been distributed. All of these associations, all of these professions, share the same concern: the definition of "real property legal services," certainly for ourselves and for the real estate association, but also the ability of the law society to regulate different professions.

For CIMBL and other organizations, the definition is a real problem. For all of our organizations, most of whom are already regulated by other independent bodies—for example, the real estate association is regulated by RECO, and as I mentioned earlier, we're regulated by

FSCO—the thought of having the law society govern our profession is unacceptable.

There are, essentially, as we've presented to the government and to the Attorney General, three solutions to the concerns that CIMBL and others have raised.

The first is, amend the legislation to change the definition of "real property" so that it is narrower and does not cover mortgage services provided by our members who are already regulated by FSCO.

The second option would be to amend the legislation to include a government regulation-making power that would exempt professions already governed by professional bodies in the province or regulators such as mortgage brokers and agents, who are already governed by FSCO. Just on this point, the current legislation reads that the law society would have that power. That's unacceptable to ourselves and to others. The government should have that regulation-making power. You have it for other bills and legislation, and this is very consistent.

The third option would be to amend the legislation to explicitly exempt certain professions that are already regulated by a professional body or regulated like mortgage brokers and agents. Some of the members of our coalition would like all three options presented. I should note that we have been in discussions with the government, with the Ministry of the Attorney General, with the Attorney General's office, as well as with the Law Society of Upper Canada on these two related issues. I do not believe it was the intent of the legislation to cover professional services already governed by separate legislation and regulators.

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We look forward to the amendments—hopefully there will be some—that will be tabled to clarify the intent of the legislation and these two aspects.

Thank you, Mr. Chairman, for your time. We'd be pleased to answer any questions that you or the committee might have.

The Chair: Thank you very much. The government side.

Mr. Zimmer: Thank you very much for your submission and your usual clearness with which you make the arguments. As you've said, you've met with the folks at the Attorney General's office a number of times, both at the political level and at the bureaucratic level. We've had a number of discussions and we are very mindful of the issues you've raised. Thank you for the presentation.

Mr. Murphy: I would acknowledge the openness of the ministry, both staff and the political offices, Mr. Zimmer, including your office, to our concerns. We haven't been told exactly what'll happen. Certainly the indication we've been left with is that this is an issue that people understand and want to see a resolution to.

The Chair: Mr. McMeekin?

Mr. McMeekin: Enough of this nice talk. But I appreciate it too.

You present three solutions to the problem. Let me just preamble by saying that I've been reading a lot lately about mortgage fraud and some of the issues around that.

I know that's a concern to you. I don't necessarily want you to touch on that, but feel free to if you want. But I want to know which of these three solutions to the problem is your preferred option.

Mr. Murphy: Probably 1 or 3. The ministry is looking at all three options, is the impression we've been left with. We probably wouldn't want a regulatory-making power; we'd rather just the government made the decision, to say, "These professions are exempted." Don't leave that in abeyance for another 60, 90 or 120 days. If the intent is to exempt ourselves and the real estate and other professions, then just do it.

On the other issue you've raised, we have been in discussions with the Minister of Government Services, Mr. Phillips, who had a meeting in early August on the issue of real estate fraud. Lenders, title insurers, mortgage insurers and a representative of the law society were all there, including ourselves. We presented a two-page paper that I can forward to you, and should to other MPPs. The government is looking, it seems, at some legislative changes to the land title system in the province that it may be bringing forward. Those are all in discussions currently. We're very supportive of ensuring a system that is fair to everyone—including borrowers, homeowners—that they are treated fairly. We're not opposed at all to looking at the land title system and the insurance fund and a first resort as opposed to a last resort. There are issues around legislative changes and what the implications of the registry system might be in terms of mortgages that are attained by fraudulent means that need to be clarified. We're not opposed to notification issues. There are lots of things, and what I'll do is forward a copy of that two-page document that we presented to the minister.

Mr. McMeekin: Thanks very much.

The Chair: Mrs. Elliott?

Mrs. Elliott: Thank you, Mr. Murphy. I would appreciate getting a copy of that as well, if I may.

Mr. Murphy: Absolutely.

Mrs. Elliott: My comment is really in the same vein, I guess, as Mr. McMeekin's. If the amendments are made to exempt those professions that are governed by your organization, I'm just wondering, do you have internal criteria for the people who are qualified to be dealing with real property in this manner within your organization?

Mr. Murphy: Yes. We do that two ways: first of all through FSCO, the Financial Services Commission of Ontario, which regulates our industry. Education requirements have to be met, education standards have to be met. There are a number of rules around that. FSCO has a registry system so that all mortgage brokers and agents in the province will be regulated. Under the new legislation, Bill 65, which has not completed second reading but has begun second reading, that will be expanded, so there'll be a number of new rules, a number of new powers that the superintendent of FSCO will have. And that's our point, similar to others that already have a regulatory body.

Above and beyond that, we have created our own designation, the accredited mortgage professional, AMP, designation for our members, in which there are three things they have to meet: One is two years of experience in the industry; secondly, a proficiency understanding of the industry, so an exam has to be written, including ethics; and three, continuing education. The province has just released this week some new education standards to go with Bill 65. We are supporting mandating continuing education. Currently in Canada, Alberta is the only province that has mandated CE for our industry, and we think that should be expanded. So we're very supportive of measures to increase the bar and enhance consumer protection.

Mrs. Elliott: If I could just ask a follow-up question: That applies to independent mortgage brokers as well as employees of mortgage departments in banks and title insurance companies as well?

Mr. Murphy: You've gotten into a very interesting area because banks, as you well know, are governed in Canada by the Bank Act, so if you go in to get a mortgage at a branch of any of the major banks, the legislation, Bill 65, would not necessarily cover them. About a third of all the mortgages in Ontario are done through the broker and agent channel. It's an increasing percentage; it's a growing industry. This is a real issue in terms of what are the rules around disclosure that one has to meet, versus what are under the federal regulations; what are the issues around education standards? All of these sort of things are very involved issues.

There is a separate issue which deals with the banks, the federally regulated institutions who have what are called road reps, people who don't work in the branches but sell a mortgage product, who may or may not place that mortgage product with the people who employ them. Again, Alberta, interestingly, will be the first province to require those people to be regulated under their provincial legislation for brokers and agents. Under the new legislation in Ontario, the provincial government is looking at that. Under the regulations, no decisions have been made.

Mrs. Elliott: Thank you very much.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, sir. It's interesting that you've allied yourself with the paralegal community, at least to the extent that it has presented itself to date, because they find it unacceptable that they be regulated and supervised by the Law Society of Upper Canada as well, so it's interesting bed partners that you have.

Why do you expect Bill 65 to complete second and third reading this fall? Are you hoping, or—

Mr. Murphy: We're hoping. Second reading has begun, so I wouldn't have put that in there if second reading hadn't begun. Second reading began on June 14. It hasn't been completed yet, but I would expect—I would hope it would be. Yes, I'll use your word. I would hope it would be.

Mr. Kormos: I was just trying to be helpful, because hope springs eternal.

Mr. Murphy: The Minister of Finance has let us know that it is a priority.

Mr. Kormos: He has?

The Chair: Thank you.

Mr. Kormos: I'm not finished.

The Chair: Go ahead.

Mr. Kormos: I was just pondering on the fact that the Minister of Finance considers it a priority. Let's see if the Premier's office considers it a priority, which is the real test, because it's competing. You've got Michael Bryant, the Attorney General, standing there at the Premier's door with his list of bills. Here we are, the year before the election, you've got potential leadership candidates who want to get profile, and they're all scrambling, climbing all over each other's backs at the Premier's office door trying to get their bill on the order paper to be called to get passed.

Mr. McMeekin raises an important issue: Do you believe that mortgage lenders should be able to act on a forged, otherwise fraudulent mortgage when they're the first-instance lender?

Mr. Murphy: It's a very, very complicated matter. It's a crime that is very developed, just the manner that it's undertaken. I think there are a lot of preconditions that are done and a lot of checking that is done, but when somebody presents documents that could be made out to be real documents, it's very difficult, and it's a very complicated issue in that sense. I don't think anybody in our industry countenances the activity, and those who undertake it should be punished. One of the things we've told the government in the two-page document that I'll share is that the penalties for mortgage fraud or real estate fraud should be increased dramatically, so that those who perpetrate—

Mr. Kormos: Read some of the language in the Land Titles Act—what's the maximum penalty, including hard labour, if necessary? Is that the language?

Mr. Murphy: We've suggested to the Minister of Government Services that those issues be looked at, along with some of the other issues that we've raised.

Mr. Kormos: And I want a copy of that.

Mr. Murphy: Absolutely. We'll send it to all MPPs.
1520

Mr. Kormos: You make a valid point. If people who participate in these consultations—unless they are committed to an in-camera private one, and I understand that as well—would share their submissions to other caucuses, it really would make it a lot more valuable. We wouldn't waste time saying, "You never consulted the mortgage brokers," because you'd have told us that the mortgage brokers were consulted and we'd know what you had to say.

Thank you for giving that to us. It's incredibly valuable for the other parties to have copies of those submissions, unless of course you've been sworn to some sort of secrecy.

Mr. Murphy: No. On the Mortgage Brokers Act, we met with Mr. Prue, who is your finance critic, and he has been very supportive. We've met with Mr. Hudak on a

number of occasions on both issues of real estate provenance.

Mr. Kormos: That's Bill 65.

Mr. Murphy: Yes. We'll continue to do that and to meet—

Mr. Kormos: But I'm talking about the inevitable discussion around the whole issue of the Land Titles Act and reform in that regard.

Mr. Murphy: As I said, the meeting was just held in the middle of August or the first week of September.

Mr. Kormos: I'm not being critical; I'm just saying it would be so helpful.

Mr. Murphy: Absolutely.

Mr. Kormos: Thank you.

The Chair: Thank you very much.

ROGER RICKWOOD

The Chair: I believe we have our 1:30 presenter on the line now, Dr. Roger Rickwood.

Dr. Roger Rickwood: Yes, I am here.

The Chair: Hi, Dr. Rickwood. Welcome to the committee. You may begin your presentation at any time you like.

Dr. Rickwood: Thank you. I apologize for the technical problem that occurred at 1:30 but I'm glad that I have an opportunity to go ahead with my presentation now.

Last year I taught a course called Access to Justice. One of our concerns at York University was increasing access to justice. We had a number of students from various backgrounds at the fourth year and graduate level enrolled. Out of our discussions it occurred to me that I should try to convey to this committee that is studying this issue some of the issues and concerns that we had.

Many of the students who were in this class had been trained as paralegals in the community colleges and had not actually practised very much but had come to university. Others were not going the paralegal route but would go to law school. Others were just interested in the public-interest nature of the situation.

My participation is that of a teacher of political science, a teacher of public law. I was teaching as a visiting professor at York University last year. This year I'm an adjunct professor in political science at Carleton University and [inaudible] at the Carleton University department of law as a sessional lecturer. So I've had to look at these issues both from the legal side and the political side. My training is in political science, public administration, business management and law.

The concern, first of all, is about the governance of any structure that's put in place to regulate paralegals. The concern that my students had—and they were very clear about it—was about access to justice, access to legal bodies making legal decisions. They wanted the cost to be kept as low as possible so that all people would have an economical opportunity to get these services. They were concerned also about the quality of the service

being provided by paralegals. They recognized that some were excellent but others were not quite so good.

They were concerned about time limits. One of the concerns that my students raised in their papers was that often paralegals would do the wrong thing or they would take a more cumbersome route to tackle the problem, which delayed the whole process and, because of time limits, sometimes prejudiced the claimant. This, of course, was not done by all of the paralegals but by some.

There was also a concern by some of the minority students that attempts to over-regulate paralegals would have the effect of squeezing out members of minority communities. They saw paralegals as a means of enhancing citizenship, integrating minorities into the community, because often people who are a little bit more educated and have a little bit better knowledge of the English language take a role in assisting some of their more recently-arrived confreres from other countries in dealing with the legal system. The fear was that the system that might be brought in, if the law society had a great deal of control over it, would lead to a lot of over-credentialization, turning people into what we would call mini-lawyers. They thought there should be a need for less-qualified people to continue.

We considered in our discussions the fact that there had to be regulation of abuse, but they didn't want there to be a conflict of interest between the people who were going to be the regulators and the people who were providing somewhat-similar services. There was an overriding concern that there had to be some kind of insurance scheme, some kind of mechanism to compensate people when there was abuse, such as the law society does now and a number of paralegals do provide through private insurance. The exact amount, however, when it's done by self-regulation by paralegals, is not always certain to cover the cost.

Briefly, I'm going to canvass the type of regulatory structures we were concerned with and which ones they felt a preference for. I may be treading into something here where the legislation has gone so far now that it's a done deal, and the outcome is preordained because they're at third reading. Even if this is so, I think some of the competitive regulatory schemes should be at least put on the record, because I would like to see some further review, perhaps in five years—perhaps a sunset clause put into legislation to bring us back in five years to see just what happens, because I'm not sure that we've got all of the facts.

We have to do something. This has gone on now for about 16 years in development, so something has to be done, but we don't want to put it into stone that won't allow some changes in the future.

The first model is where the law society has a priority role in the regulation of paralegals. This is one that some elements of the law society prefer, though I'm not sure all lawyers are committed to it.

Another form of governance or regulation is done by administrative tribunals where paralegals appear in front of them and they set certain standards for who appears,

how they have to file documents, and they exclude people if people go too far. This can be the case, in the past, at the Immigration and Refugee Board, which is under federal jurisdiction, and also the workers' compensation board and Workers' Compensation Appeal Tribunal.

A third model would be an independent commission. This is a kind of model that would share the power regulation between various paralegal stakeholders, lawyers and some people from the public interest. Originally this model was developed by Dr. Ron Ianni at the University of Windsor, and it was picked up but somewhat diluted by Mr. Justice Cory. This model appears to be a bit cumbersome to the policy-makers, and it appears to be being put on the back burner.

The other model, which is the fourth one, is basically self-regulation by the paralegals, where they set up their own bodies to regulate themselves. We've seen a little bit of this with respect to mortgage brokers through their associations and some attempts to get some government legislative assistance to back it up.

1530

The fifth model is simply laissez-faire: Do whatever you want; if there are problems, let the market sort it out. This was something that was prevalent in Ontario prior to the 1990s and is clearly what Mr. Justice Cory and Professor Ianni were trying to correct.

The concern that my students had—and I'll just share it with you—was that whatever structure is adopted, there has to be rigorous training of paralegals. It can't be a hit or miss type of process. There has to be some proficiency.

Many paralegals are now going through programs in the community colleges. This is a low-cost approach. It provides high access for minority groups. We have some private educational institutions putting out paralegals. These tend to be higher-cost types of programs. We also have the universities getting into the business as well by putting out certain types of justice certificates. Brock University and York University have been doing this. This is a general type of background for people who will go out and do some paralegal type of work. Then you have people who go to law school, graduate from law school, but don't ever bother to be called to the bar, partly because of the high cost of being called to the bar, and they function as paralegals.

One of the things that we were concerned about in our discussions was that a lot of the paralegals didn't always appear to have good language proficiency and that it was often difficult to understand them when they were in front of you. I must say that I can speak from the fact that I was a member of the immigration and refugee board for seven years and I had to hear agents, paralegals, coming in front of me and handling cases. Often, it was very difficult to understand what they had to say. They could talk to the claimant, but they really had a communication problem. There are also some problems with ensuring that there are enough people competent to speak French and also in the area of providing services to people who are deaf.

One of the areas that I found most refreshing in my work—and I was involved with the Workers' Compensation Appeals Tribunal and in Small Claims Court and in a number of other bodies—was that former civil servants who retired or took early retirement had mature experience and they knew their way around. They do very good work in front of the WCB, in front of the immigration boards. Some of these are former CIC officers, WCB officers, court clerks and police officers. Some of these officers should have some kind of general refresher training before they take part, but I found most of them very satisfactory in the work that they did. They certainly didn't waste a lot of time.

I think that the students who came out of the community colleges and had gone into the universities were seeking more than just narrow technical skills. They thought they were getting the narrow technical skills in the community college programs, but they were looking for a broader liberal education in philosophy, social sciences and law so they could put their training into a better perspective. Some of them were looking for a way just to train themselves as oral advocates, to be able to speak and write in a consistent and clear manner.

I would also say there's a role for the various courts and tribunals to play in training paralegals by allowing them to come and sit at their hearings and having judges or tribunal members speak with these students after. Maybe some clerkships, internships, could even be set up. George Brown College had a WCB officer training program for a while; Brock University had one for a while that was working. When I was at the immigration and refugee board, I often had students from various schools come and sit and watch and then we'd discuss the issues afterwards.

I'm also concerned about the need for research in this area. This is why I think that even if the committee agrees to the current Bill 14 plan, there should be mechanisms whereby ongoing research can be carried on as to what is being done, how well it's being done and what the costs are. Some of this could be done by academics. Of course, maybe I have a conflict of interest in that situation, but academics are at least somewhat independent. There needs to be public opinion polling as to what the public feels it wants, what kind of satisfaction they're getting and some types of in-depth focus groups should be used and also some consultation with ethnic and community groups to see whether their communities are being serviced properly. Finally, there's a role for the political parties. I think this is an issue where the topic could be brought up in policy discussions among the Ontario political parties to see just what kind of views the memberships of those parties have.

I'll wrap it up here. I just wanted to say I'm not really sure, nor are my students, as to what exactly a paralegal is, what exactly constitutes a paralegal professional and how it can be defined. It seems to me that however the definition is defined, there's always going to be some who are going slip outside of that definition and be exempt.

I'm concerned about what Mr. Murphy was saying about some of the problems in mortgage fraud that have gone in the province of Ontario where some people were engaging in the brokerage of a mortgage and not doing it perhaps in the best way and some fraudulent things happening

That is the gist of my presentation. I think the legislation needs to go ahead. I am a little concerned about the strong role the law society will play in this regulation. I think a more shared structure might have been better. There is some concern in the community among paralegals, and they've spoken to me, that they fear the law society really isn't concerned about the quality of the paralegals but more in preventing competition. This appears to be in the family law area and where there are uncontested divorces. Paralegals can now do it for \$300 or \$400, whereas a lawyer, at least according to the *Toronto Sun*, would charge \$800 to \$1,000. I don't know how true this is, but it's certainly a concern that some of the people in the paralegal community have brought to me. Some of my students tended to be skeptical of lawyers and, I guess, even skeptical of me because of my legal background. They wanted to make sure, whatever regulation was done involving the law society, that it be very clear and transparent, very predictable and that there be a regular review to ensure that everything was being done right.

Thank you for allowing me to give my overview. If there are any questions, I would be willing to try and answer some or at least get back to you if I can't answer them today.

The Chair: Thank you, Dr. Rickwood. I believe we have one comment, question.

Mr. Zimmer: Roger, it's David Zimmer sitting here at the committee.

Dr. Rickwood: Yes, David Zimmer.

1540

Mr. Zimmer: I thought this was the same Roger. It's nice to hear your submission and your thoughtful concerns here.

Dr. Rickwood: You will remember very well some of the problems that took place at the IRB, with some particularly [*inaudible*] that were often difficult to deal with just on a personality basis, regardless of their technical skill. I don't think that claimants should ever be compromised by that kind of a situation.

Mr. Zimmer: Yes I do, and you're quite right. Thanks. It's nice to hear from you.

Dr. Rickwood: It's good to see you're doing well there.

The Chair: I believe there are no further questions or comments. Thank you, Dr. Rickwood.

Dr. Rickwood: Thank you, Mr. Dhillon, and thanks to all members of the committee. I think you're doing a great job at the last part of summer, trying to get this thing through. We look forward to seeing your final report.

The Chair: We appreciate that. Thank you.

HUMAN RESOURCES PROFESSIONALS ASSOCIATION OF ONTARIO

The Chair: The next and final presentation for today is from the Human Resources Professionals Association of Ontario. I believe they're all here. You may come up. Good afternoon. We're going to need you to identify yourselves for Hansard. You may start your presentation.

Mr. Bill Greenhalgh: My name is Bill Greenhalgh and I'm the chief executive officer of the Human Resources Professionals Association of Ontario, HRP AO. With me on the right is Stephen Rotstein, our director of government and external relations, and to my immediate right is Antoinette Blunt, who is a member of our board of directors and is the chair of our association's government relations committee.

Mr. Zimmer: Any relation to the famous spy?

Interjections.

Mr. Greenhalgh: Sir Anthony Blunt, yes, keeper of the Queen's pictures.

Thank you very much for seeing us this afternoon. As the premier human resources association in Canada, HRP AO is internationally recognized and sought out for its knowledge, innovation and leadership. It was formed by an act of the Ontario Legislature in 1990, and with over 16,000 members in Ontario and other locations internationally, HRP AO is the third-largest human resources association in the world. We are also the proud host of the second-largest annual human resources conference and trade show in North America.

HRP AO is also known for its stewardship of the Certified Human Resources Professional designation, or CHRP for short. A high level of rigour, competence and professionalism is required to achieve the CHRP designation, which is the national standard for professional excellence in HR management. Holders of the designation are those with high levels of expertise and competency in areas such as strategic thinking, business insight and an ability to contribute as a business partner with senior management. Along with the rigour associated with earning this designation, holders of the CHRP designation must be recertified on a regular basis to ensure that they maintain their high skill level and competency.

As is the case with a number of other professional associations, human resource professionals are held accountable to the public. A formal process provides the means whereby professional misconduct, incapacity or incompetence can result in disciplinary action, including suspension, loss of certification, expulsion from the association or other penalty.

The act that established HRP AO provides that our members must adhere to a code of ethics and rules of professional conduct. I am pleased to provide you with a copy of our code of ethics.

As representatives of HRP AO and stewards of the CHRP designation, we appreciate the opportunity to provide our comments on Bill 14. We understand that part of the intent of this bill is to ensure that paralegals

fall within the jurisdiction of the Law Society of Upper Canada, and we have no issue at all with that intent. However, as it is currently worded, the definition of "provision of legal services" in schedule C to Bill 14 is so broad as to encompass many professions beyond paralegals.

Bill 14 states that "a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person." The bill goes on to say that "a person provides legal services if the person does any of the following," including, but not limited to, representing "a person in a proceeding before an adjudicative body," or negotiating "the legal interests, rights or responsibilities of a person."

This wording would result in the possibility of several professional associations falling within the jurisdiction of the Law Society of Upper Canada. Using human resources as an example, there are a large number of tribunals that hear matters that arise out of employment relationships.

For instance, the Ontario Labour Relations Board deals with a number of employment-related statutes, including the Ontario Labour Relations Act and the Employment Standards Act. It is an "adjudicative body" under the definition proposed in the bill. The same holds for the Human Rights Tribunal. In addition, arbitration boards or arbitrators under collective agreements fall within the definition of "adjudicative body."

None of these adjudicative bodies requires persons to be lawyers in order to represent persons, corporations or trade unions. Indeed, many representatives are members of the Human Resources Professionals Association of Ontario, holding various positions in the field of human resources management or functioning as consultants.

In addition, non-lawyers on both sides of the union-management table provide advice on legal interests, rights and responsibilities. As well, they engage in negotiating those rights in the process of collective bargaining. Under the current wording of Bill 14, these persons would be considered to be providing legal services. While we're not here to speak on behalf of other professions and professional designations, we are sure that many other professions would be captured within this proposed wording of providing legal services.

We trust that this is an unintended consequence of the bill, as we believe that the intent was to capture the work conducted by paralegals. As such, we request that Bill 14 be amended to exclude those classes of professionals that are not intended to be regulated by the law society, and specifically members of the Human Resources Professionals Association of Ontario.

We understand Bill 14 provides the Law Society of Upper Canada with the power to provide exemptions using its bylaw-making powers. However, we support the position put forward by the Ontario College of Social Workers and the coalition on Bill 14 that recommends exemptions be addressed in the act by the Legislature due

to the fact that the Legislature is a publicly appointed body.

However, if our understanding of the intent of Bill 14 is not accurate, then based on our own code of ethics, our rules of professional conduct, our ability to regulate the conduct of our members, our stewardship of the certification designation and the mandatory recertification of CHRP designation holders, we strongly believe that it is unnecessary for members of the Human Resources Professionals Association of Ontario to fall within the jurisdiction of the Law Society of Upper Canada. We strongly urge you to amend Bill 14 so as to exclude members of our association.

I thank you for your time, and we'd be very pleased to entertain any questions that you might have.

The Chair: Thank you very much. We'll start with the official opposition.

Mrs. Elliott: Actually, I don't have any questions. Thank you very much for a very thorough, great presentation.

The Chair: Mr. Kormos?

Mr. Kormos: Your comments are consistent with submissions of so many others, ranging from mediators to mortgage brokers who were here. I presume, because nobody's come clean on this yet, that it's subsection (5) of proposed section 26.1: "A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the bylaws." I presume that's what the government, with this legislation, intends to use to exempt, if you will, folks like you. I mean, just for the life of me, it would be silly. The whole goal here is to regulate paralegals, right? We know what paralegals are. Unfortunately, there isn't a strong, clear definition of "paralegals," certainly not in the bill.

The problem with that is that inevitably somebody's going to be left out by virtue of that bylaw, simply because it's human nature, and as mediators who were here yesterday pointed out, in their area of expertise, it's constantly growing, evolving, changing. There are new resolution techniques being developed and we don't even know the titles yet, so how can they be included?

So I say to Mr. Zimmer, the parliamentary assistant—he's got the ear of the Attorney General on a daily basis, first thing in the morning and the last thing at night—we're going to have more of these submissions. We've got days and days of hearings. We don't have time, at least not yet, to hear all the people who want to make comments. You've got a brain trust that's incredibly capable, that wants to do this. Why doesn't the government sit down, put something together to be in the legislation so we can put this particular issue to rest? I think everybody agrees we've got to regulate paralegals. People don't agree as to whether or not it's the law society that should be doing it. We haven't heard from any paralegals yet who want the law society to regulate them. I'm waiting. Let's put this one to rest.

I say to the government, these people want to see it in the bill. They don't want to wait for a bylaw from the law society; they want to see it in the bill. They want it

articulated clearly. They want to be protected from what will be duplication of regulation.

Thank you very much for your comments. I hope everybody agrees with you.

The Chair: Any question or comment from the government side?

Mr. Zimmer: Thank you for your presentation. I've been looking over your materials and I am aware of the strengths of your organization. When I was practising law on the labour side, I had dealings with your organization. You do good work.

I understand the submission you've just made. We've heard it from some other persons also. This committee will, as it does with all submissions, give it careful consideration and the legislation will unfold. Thank you.

The Chair: Thank you very much. That concludes our hearing for today. I just want to advise the committee that the people who were missed yesterday afternoon have been rescheduled, except for one, for tomorrow. We'll be meeting tomorrow morning at 9 a.m. in room 151.

Mr. Kormos: Just one minute, Chair, please. They've been rescheduled, I presume, in the slots that had not yet been filled.

The Chair: Yes, Mr. Kormos.

Mr. Kormos: No, no. We made a commitment that those slots that had not yet been filled were going to be made available to people on waiting lists. I made it very clear, I hope, here in committee that we would co-operate

and participate in making sure the committee sits to accommodate those people effectively one half day.

I think by virtue of merely slotting them into the vacancies—look, we lost half a day. We dealt with that this morning; it's done and over with now. We're then giving short shrift to the people who had every legitimate right to count on those vacancies—do you understand what I'm saying?—when we're prepared to accommodate the folks who were displaced yesterday by another half day. I'm not worried with them being scheduled in, all right? Fair enough. The clerk was trying to work expediently, because these people were probably a little antsy, a little nervous about whether or not they were going to get heard. But I'm making it very clear, on behalf of this caucus, that we expect this committee to sit one more half day and we can then pick up some of the people who were counting—because folks knew there were empty slots, right? Those folks on the waiting list were counting on those empty slots. We owe it to them.

I'm not being bellicose about this. Far be it for me to adopt that sort of demeanour, but surely we've got to sit another half day. We can deal with this in subcommittee.

The Chair: Yes, I think that would be a good idea. Thank you, Mr. Kormos. Thank you, everybody.

This committee is adjourned until 9 a.m. tomorrow in room 151.

The committee adjourned at 1554.

STANDING COMMITTEE ON JUSTICE POLICY

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Access to Justice Act, 2006

Comité permanent de la justice

Loi de 2006
sur l'accès à la justice

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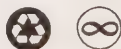
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 7 September 2006

Jeudi 7 septembre 2006

The committee met at 0905 in room 151.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006

SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

CANADIAN MEDICAL
PROTECTIVE ASSOCIATION

The Vice-Chair (Mrs. Maria Van Bommel): Good morning, everyone. I want to call this public hearing of the standing committee on justice policy to order. I want to welcome committee members, the public and presenters. The first order of business is a presentation by the Canadian Medical Protective Association, if they could please come forward.

Good morning, gentlemen, and welcome. You have 30 minutes. If you use up the entire 30 minutes for your presentation, there will be no time for questions or comments from members of the committee, but otherwise, you're welcome to use as much as you need and then we will have further discussion. If you would please just give your names for the record and then proceed.

Dr. Bill Tucker: Good morning. I'm Dr. Bill Tucker. We thank you for the opportunity of presenting our submission, Madam Vice-Chair and members of the committee. I'm a neurosurgeon in charge of the division of neurosurgery at St. Michael's Hospital here in Toronto and I'm the vice-president of the Canadian Medical Protective Association, which we will hereafter refer to as the CMPA.

The CMPA is a not-for-profit mutual defence organization operated for physicians by physicians and it provides professional liability protection to approximately 69,000 Canadian doctors, including 27,000 here in Ontario. The CMPA also compensates patients who have been shown to have been harmed by negligent medical care. As a not-for-profit organization whose *modus operandi* is to balance, over time, its costs and revenues,

the CMPA has nothing to gain financially or otherwise from this bill.

I'm joined by Dr. John Gray on my right, the CEO and executive director of CMPA. Dr. Bill Beilby, the associate executive director, and Mrs. Margaret Ross, general counsel for the CMPA, are also with us and available for questions at the end of the presentation.

We're here to speak to you about the provisions of the bill that deal with periodic payments, or what are commonly called structured settlements in medical liability cases. Specifically, the element of the bill is that which clarifies section 116 of the Courts of Justice Act.

With over 100 years of experience, and as a national organization, we believe we're in a unique position of feeling the effects of medical-liability-related legislation across the various jurisdictions of the country. We have observed how courts have interpreted such legislation and what the positive and negative impacts have been. We know that decisions of Ontario courts have, to a significant degree, veered away from the original intention of the existing provisions of the Courts of Justice Act. Accordingly, we are very pleased that this amendment has been introduced to reaffirm the original legislative purpose: namely, that periodic payments should be preferred as the means of compensating those who are harmed as a result of negligent medical care.

The committee staff has received our written submission, which describes the substantive advantages provided by the proposed legislation. In our brief remarks today, we wish to build on three key themes. Firstly, by eliminating any doubts as to the future compensation flows, structured settlements are beneficial to injured patients. Secondly, by reducing overall costs while providing the same level of compensation to the injured patients, structured settlements enhance the sustainability of the medical liability system. Finally, as medical liability costs form part of the overall health care expenditures, structured settlements enable authorities to free up monies from overhead costs and to make them available for patient care.

Before passing the microphone to Dr. Gray, let me momentarily take off my hat as an elected member of the CMPA council and speak to you as a practising physician and surgeon. Nothing is more traumatic for a doctor than to have a patient injured in the course of medical care. This emotional distress is shared by the patient and by his or her loved ones. This trauma is many times greater

when it has been determined that the injury has occurred as a result of negligence. In these circumstances, a key element of alleviating some of this distress is knowing that, for the remainder of the injured patient's life, there will be a guaranteed compensation flow to enable them to receive the treatment they need. Structured settlements provide that assurance and, if for no other reason, are worthy of your support.

I will now ask the CEO of the CMPA, Dr. John Gray, to speak to these issues in greater detail.

0910

Dr. John Gray: Thank you, Dr. Tucker. Let me preface my remarks by stating that, while I am currently the CEO of the CMPA, I too understand the impact on patients and their families of an adverse medical event. I practiced for 26 years as a family doctor in Peterborough.

The effect of the proposed amendments would be to ensure the consistent use of periodic payment plans, or what are often referred to as "structures," as a means of providing compensation for the cost of future care to those injured through medical negligence. As Dr. Tucker has stated, this would bring significant benefits to the health care system as a whole and to its liability component. Most importantly, these benefits can be achieved while ensuring full compensation to injured patients.

Opponents of structured settlements often suggest that periodic payments shortchange the injured patient. I will highlight for you that this is an absolute falsehood.

Before looking at the benefits they provide, let me offer a quick word on how structures actually work. Traditionally, future care costs awards in a medical malpractice lawsuit have been in the form of a one-time, lump sum payment; but courts and commentators have long recognized that lump sum awards are less than adequate as a means of providing for an injured party's costs of future care.

Structures reflect the realities of patient care by paying out the cost of that care over time rather than as a single, once-and-for-all lump sum payment. This is achieved by purchasing a guaranteed annuity from a Canadian life insurance company which, in turn, pays the injured party the required periodic payments, usually on a monthly basis, and almost always for the rest of his or her natural life. The only exception is if the injured party directs otherwise at the outset.

This guaranteed flow of payments comes at no risk to the patient. The risk is absorbed by the insurance company that issues the annuity. The insurance company in question manages this risk through a comprehensive understanding of life expectancies and by spreading it over many cases.

From a patient's perspective, there are actually two critical risks associated with the lump sum approach, both of which are effectively addressed by structures. There are compelling social policy reasons why a structure is a preferred means of compensating an injured party for future care costs.

The first risk is that lump sum awards are subject to premature dissipation, leaving injured parties reliant on

any other savings they may have—or they may actually become dependant on the state at some future time. The danger is particularly acute when, as is often the case, the injured party is a minor or is not competent to manage their affairs. A number of factors can contribute to dissipation, including but not limited to poor investment decisions or the vagaries of financial or equity markets.

The second major risk is that the patient outlives the projected lifespan on which the lump sum payment was based. The lump sum award is calculated by capitalizing the projected costs of future care over a set period of time, usually the court's educated guess as to how long the plaintiff is likely to live. That estimate is inherently highly prone to error. Canada has very good statistics on average life expectancies of whole populations or segments of populations, but courts, actuaries and doctors cannot predict with any degree of certainty how long an individual patient will live. So when someone receives a lump sum for their future care, there is a very good possibility the person will live longer than expected. Even if well-managed, the lump sum eventually proves inadequate to provide for that person's long-term-care needs.

Structured settlements address both of these concerns by making regular and indexed payments for the duration of the person's actual rather than projected life. If the injured person survives much longer than had been predicted at the outset, the additional costs of care are assumed by the insurance company rather than by the injured party.

In a presentation during your spring sitting you heard that structures are inflexible and cannot respond to changes in medical practice. Such a statement is, quite simply, wrong.

While I would hope it would not be the case, let's assume in the worst situation that the procedure or technology does not fall within our publicly funded health care system. In developing the structured settlement amount, courts have full flexibility to take into account such changes and to make provisions for them in determining the cost of future care. In this respect, it's important to remember that the largest differentiation between periodic and lump sum payments is not the calculation of the cost of future care but rather how efficiently and effectively those needed funds are provided.

Let me now shift the perspective away from the patient and focus for a few minutes on the sustainability of the health care liability system. Why is maintaining an effective liability system important? Firstly, it ensures that compensation is available to patients who have been injured as a result of negligence; and secondly, it enables health care providers to practise, knowing that their patients would be compensated and that they are not personally exposed to financial ruin.

In international circles, it is widely recognized that Canada's tort-based medical liability system is one of the most effective in the world. We should not, however, take this system for granted. We only have to look south of the border to see where spiralling medical liability costs have led to the withdrawal or collapse of several

medical liability insurers. The result has been that injured patients have been left without access to compensation and, in many cases, physicians have exited high-risk specialties because they cannot afford the insurance premiums. While we tend to look to the US situation, there are regrettably many other international examples where uncontrolled costs have created crisis situations.

There is therefore a pressing need to contain costs and to ensure the stability of a medical liability system which allows physicians to practise without fear that a lawsuit will lead to financial ruin, while also providing a secure source of compensation for their patients injured by negligent medical care.

The CMPA, in partnership with the Ontario Medical Association and the Ministry of Health and Long-Term Care, has been engaged in a process to seek ways of containing medical liability costs. We have pursued these efforts through various discussion groups involving the plaintiffs' bar, the defence bar and the judiciary. What has clearly emerged from these discussions is that reducing medical liability costs does not have to be at the expense of deserving plaintiffs. Structured settlements can substantially lower system costs while still providing full compensation to those injured from negligent care. They provide the same benefit to an injured party at a substantially lower cost to the system, and I will very quickly examine how this occurs.

Insurance companies are highly skilled at risk analysis and have the opportunity to spread their risk associated with a particular case over many thousands of cases in a manner that an individual person simply cannot. As a result, the cost of purchasing a structure annuity that pays out a given stream of income is often lower than the cost of providing that exact same income stream through a lump sum payment using traditional methods. The result is a direct savings to the medical liability system without any resulting loss to the injured party.

Some might argue that insurance companies operate to make a profit and hence add costs to the structured settlement, and this is true. It's also true that they operate in a highly competitive and global market that tends to control those costs. We should also not lose sight of the fact that there are similar costs with lump sum payments. As the lump sum is intended to be invested to provide a stream of income over a long period of time, professional advice is generally required, leading to management fees, which in turn are paid by the medical liability system. With a structure, the life insurer guarantees payment of the required stream of income to the injured party, and no outside professional help, and therefore no management fee, is necessary.

A highly significant inefficiency inherent in a lump sum award is what is known as income tax "gross-up." While the lump sum award is tax-free in the hands of the injured party, the income derived from the return on the investment is taxable. Taxation on the income derived from the lump sum payment has the effect of depleting the money intended to be available to meet the injured party's needs. Therefore, the courts have required defen-

dants to "gross up" the lump sum payments to offset the plaintiff's resulting income tax liability. The defendant must, in effect, pay the plaintiff's taxes up front.

0920

These gross-up awards can be significant. In a typical case, they can add tens or hundreds of thousands and, in some of our cases, millions of dollars to the award for future care costs. Yet this gross-up does not provide any benefit to the injured party; it merely flows through the injured party to the federal government coffers in the form of tax revenue.

These additional costs are again borne by the medical liability system, but they are entirely avoidable through the use of a structure. The Canada Revenue Agency has ruled that periodic payments received as part of a structure are tax-free in the hands of the recipient. Therefore, there's no requirement to gross up the award to offset any income tax liability. This can and will produce significant, tangible savings to the medical liability system without any resulting loss to the injured party. Rather than having to compensate the plaintiff for his or her income tax liability, a structure eliminates that tax liability altogether.

So we can see that the use of lump sum payments generates a great deal of overhead costs. In our written submission, we have identified the savings that are achievable through the mandatory use of structures, but I'd like to highlight some of those numbers for you. I'd first ask you to note that our calculations are based on those cases in which CMPA member physicians alone are involved. However, there are many additional cases involving other health care providers, clinics and hospitals in which savings would also accrue. We've also adopted conservative assumptions, so what I am providing represents the very low end of the potential savings.

If we compare a situation in which there's no use of structures for future cost of care with the situation in which structures are used as outlined in the bill, the annual savings in Ontario would be approximately \$2.7 million. But it's our experience that when injured persons adopt a periodic payment approach, they also structure the loss of future income component of the settlement. Under such circumstances, the cost reduction grows to approximately \$5.1 million annually. Given the backlog of cases still moving through the legal system, there would also be very significant one-time savings, which are also spelled out in the submission.

Ultimately, the cost of the medical liability system is borne by the health care system as a whole. In Ontario, as throughout Canada, a portion of a physician's medical liability protection costs are paid for by the provincial health care budgets. These costs were negotiated by the Ontario Medical Association in lieu of increases in fees for clinical services. The Ontario government and independent agencies accept that this forms an element of physician compensation. Thus, every dollar that the province can save in the medical liability system is a dollar that's already in the MOHLTC budget that can be spent on the delivery of direct patient care.

As I have just described, these potential savings of a minimum of \$2.7 million, and potentially much more, each year do not represent reduced compensation to patients. They are solely unnecessary overhead costs, largely in the form of tax payments that, through a circuitous route flow, from the Ontario health care budget to Revenue Canada through tax gross-ups.

I would reiterate that this is not mythical money or phony paper transactions. These are funds currently in the health care allocation that we believe could and should be used to improve patient care in the province. The mandatory application of structured settlements achieves this goal.

The courts have frequently commented on the deficiencies of lump sum awards and the merits of periodic payments but have ruled that only the legislative branch could effect such a reform of the common law. Indeed, other provinces have heeded this call and introduced legislation similar to that before you. In Ontario, there have been successive attempts to make them mandatory in a variety of contexts. Unfortunately, the wording of those legislative provisions was interpreted by the courts as limiting their ability to apply the benefits of a structure fully and consistently. It's our hope that the suggested new wording of all of the provisions relating to structured settlements will serve to appropriately guide the courts and remedy the problems.

Let me close by saying that, in conjunction with the Ministry of Health and Long-Term Care and many others, we have fought hard for the proposed provisions because we believe they're beneficial for patients, the medical liability system and health care in this province. They are sound social policy and make financial sense.

We applaud the introduction of these provisions. We hope that you'll recommend their swift passage.

Madam Vice-Chair, thank you again for the opportunity to present CMPA's comments on the provisions in Bill 14 to amend section 116 of the Courts of Justice Act. Dr. Tucker and I, along with our two colleagues, would be pleased to answer your questions.

The Vice-Chair: Thank you very much, Dr. Tucker and Dr. Gray. We have three minutes for each side and we start the rotation with the official opposition, Ms. Elliott, please.

Mrs. Christine Elliott (Whitby-Ajax): Thank you very much for your excellent presentation. I'm certainly familiar from my own past legal practice with respect to structured settlements and how helpful they are, particularly in situations where you may have a person who's been injured who was not mentally competent or was a child, for example. Even though they have litigation guardians, it's always a good idea, because they're so young, to have that future guaranteed income stream.

But with respect to the amendments that are proposed, it's suggested that there be periodic payments awarded unless it would be unjust to the plaintiff to do so. Could you give me some idea of what you think would be a circumstance that would justify a lump sum payment

instead of a periodic payment? Would there be really very many at all?

Dr. Gray: I think all of the risks that we talk about, premature disposition of the funds with a lump sum, are taken away by the structures. It's hard to conceive, quite honestly, of situations in which a lump sum would be clearly, on its merits, superior to the structured payment. There have been suggestions about the inflexibility, the lack of ability to transfer the funds, but in reality the bill talks about the future health care/medical care costs and that these funds are expected to be used for those types of payments. Indeed, the structure is designed to ensure that those payments will continue in the manner in which the courts intended for the actual lifetime of the plaintiff rather than trying to guess, as is often the case, at a point in time how long that person will live.

Mrs. Elliott: Thank you very much.

The Vice-Chair: Mr. Kormos?

Mr. Peter Kormos (Niagara Centre): Thank you, gentlemen. You're not suggesting that courts can't provide structured settlements in their awards now, are you?

Dr. Gray: They cannot order them against the wishes of one or the other parties at the present time.

Mr. Kormos: Well, if it were in the best interests of both parties, which is what you're suggesting, why then would either party object? Irrational respondents or defendants or plaintiffs?

Dr. Gray: I can't speculate on the motives of why people would object. I have seen arguments put forward that would suggest that the periodic payment approach would be superior. What we've tried to suggest today is that in fact those arguments can be countered with equally credible and, in my view, much stronger arguments that the benefits of structures far outweigh the benefits of periodic payments. In the midst of a court action and a negotiated settlement or, ultimately, a court decision, people's ability to see through all of those rational arguments is often impaired in the heat of those legal environments.

Mr. Kormos: I'm troubled by creating legislation that fetters judges' discretion, and I appreciate the application for lump sum provision. Why shouldn't the legislation read "may" instead of "shall"? Wouldn't that address all of the concerns?

Dr. Gray: I guess the best way I can try to answer that question is to say that the courts themselves have said, "We want our discretion fettered." Through Justice Coulter Osborne during his inquiry in Ontario and the Chief Justice of the Supreme Court of Canada, both prior to appointment to the bench and since, have stated that the courts would prefer not to have that discretion but that the Legislature must in fact take that discretion and, to make it in clear language, take that discretion away. Otherwise, their discretion is fettered.

Mr. Kormos: But in fact they do have discretion by virtue of subsection (8), don't they?

Dr. Gray: But as I say, these eminent members of the bench have themselves said that they believe that lump

sum payments are not the preferred method, that the method that should be used is structures, but unless they're ordered to do so or unless the legislation makes it clear that they must do so, they cannot—

Mr. Kormos: I hear you, but subsection (8) creates discretion.

0930

Dr. Gray: Only in extremely unusual cases where it's contrary to the interests.

Mr. Kormos: It says, where "the plaintiff satisfies the court that a periodic payment award is unjust." But your interpretation of that language is different from mine. Thank you kindly.

The Vice-Chair: The government.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Gentlemen, I appreciate your presentation as well. My spouse is a practising family physician. I suppose if Mr. Chudleigh were here, he might suggest I have a conflict of interest. But notwithstanding that—

Mr. Kormos: I'd suggest you're very fortunate to be married to a physician.

Mr. McMeekin: Listen, all kidding aside, I'm very fortunate to be married to the young lady I'm married to, I can assure you of that. And I can attest experientially to the escalating costs of medical liability insurance. It is a real difficulty. That, of course, has to be juxtaposed to the mitigating negative spiral around settlements to injured people in all kinds of situations, which I think ought to concern everybody in this room.

I just wanted to suggest that I found your presentation not only interesting but instructive. I will commit, Madam Chair, to personally ensuring that the finance minister sees this as well. I think it's properly something that he needs to look at and perhaps consider addressing.

The Vice-Chair: Thank you very much. Thank you, gentlemen.

HEALTHCARE INSURANCE RECIPROCAL OF CANADA

The Vice-Chair: If we could have the Healthcare Insurance Reciprocal of Canada come forward, please. Good morning, gentlemen. You have 30 minutes for your presentation. If you use up the entire time for your presentation, then there will be no opportunity for comment or questions by members of the committee. If you would please state your name before you start, and then we will go ahead.

Mr. Michael Boyce: Thank you, Madam Vice-Chair. I am Michael Boyce. I am the vice-president of claims for the Healthcare Insurance Reciprocal of Canada. To my right is Brian Main, the vice-president of insurance operations for HIROC. We have come to speak to you about a very specific section of Bill 14. Could I ask the committee members if you've seen my presentation? I see Mr. Kormos has a copy. Everybody has it? Okay, then let's get going.

Let me apologize in advance. This is the first time I have ever attempted to speak to a committee, so I hope and pray that you'll give me a little bit of discretion. I will try not to insult anybody and I'll try to tell the truth.

Mr. Kormos: You're ahead of most of us.

Mr. Boyce: Thank you, sir.

Mr. McMeekin: I just assumed you were going to tell us the truth.

Mr. Boyce: First, I thought I'd tell you why we're here, and that involves telling you what HIROC is and why this is important to us. Then I intend to comment a little bit about structured settlements in general, although the CMPA's presentation and their handout, which they were kind enough to give to me, seem rather instructive on that. I'll talk a little bit about the advantages to structure in the hands of both the successful plaintiff and defendant to an action, and society as a whole, and then close with an encouragement to you folks to at least pass the portion of Bill 14 which amends section 116 of the Courts of Justice Act.

HIROC was founded in 1987 as a result of the liability crisis in medical malpractice in Canada. Back then, our hospitals were experiencing doubling and trebling of insurance premium rates because of some judgments which severely increased the settlement values of cases and, as well, potentially increased the liability of defendants for certain types of actions. We are a not-for-profit reciprocal, which means that we're not an insurance company, although we are an insurer under the Ontario legislation. We are completely owned by our not-for-profit health care subscribers. While we originally started out in Ontario because that's where the liability crisis was, we have expanded over the years, and we are now in probably a majority of Canada. Our hospitals and health care providers cover about 19 million Canadians in total. We insure all the midwives in Ontario. We insure, for example, every hospital in Toronto. We have about 90% of the critical care beds in Ontario, and our penetration is even greater in many of the other provinces.

We collected \$115 million in premiums—thanks to Brian—this year. That's the good news. The bad news is, of course, it was collected from the not-for-profit health care subscribers who are members of HIROC, and those are the hospitals, for all intents and purposes, that you people provide funding for. More than 85% of our premium comes from Ontario, and we also, in addition to the hospitals, insure the employees of the hospitals—so all the nurses, all the technicians; even the odd board chairman and CEO of the hospital come under our purview.

We have a few advantages over a traditional insurance company, and that's why we spread across Canada so quickly. One is that our subscribers get back all of the unused premium and our investment income. So if we can't spend it, we give it back to the subscribers. This has the net result of being terrifically efficient for the subscribers. To date, and since 1987 when we were founded, we've returned about \$75 million to our subscribers. That's money that goes right back into the health care system. Our channels of distribution, because

we are a not-for-profit organization and don't pay taxes on income to the federal government, are terrifically efficient, and our not-for-profit status, I think, helps us an awful lot.

We have a couple of functions. We were originally started out just to defend claims made against our subscribers, but we decided to branch out very early on in our existence, and a very significant part of what we do now is related to risk management activities.

One of the more recent ones that we have done is to provide very significant funding for the MORE^{OB} program, which is a program to improve the birthing facilities in the various hospitals. This is something which was conceived by the Society of Obstetricians and Gynecologists of Canada. It's a computerized training-learning experience, which involves not just the nurses, but also the physicians and the organizational structure of the hospital. It has received rave reviews from the people who have tried it, and it has very recently been adopted holus-bolus by the provinces of British Columbia and Alberta for use of all their hospitals. It has not been adopted by the Ontario ministry yet, but since we effectively reach about 90% of the critical care beds, they may figure that we're doing some of the work for them.

Finally, our job is also to further our vision, and our vision is to partner with other entities to provide the safest health care system in Canada. That's why we provided significant funding to the SOGC and to our hospitals, to enable them to take the MORE^{OB} program. It's why we invest so much time and effort in the risk management activities, and it's also the reason I'm here today, because I see a slight opportunity for us to maybe improve the provision of health care services, because one of the ways that we can provide a safe health care environment is to provide more money to the health care system.

We give back the money that we don't spend already, so that's pretty nice. But we also have an obligation to make sure that we're efficient in how we operate and to assist our subscribers in being efficient in how they operate. The thought struck us that it might be a really good thing to look at the legal system that we practise health care in, to make sure that it's as efficient as possible in the system that it provides.

So we've examined a lot of things. We've examined the cost of the legal adjudication of claims. We've examined the cost of our overheads, our legal overheads, and other types. Finally, we took a look at the cost of providing settlement funds to worthy plaintiffs or claimants. We decided that the most relevant way of determining what our real cost is, is to look at the net present value of it. Oddly enough, that net present value seems to be exactly what structured settlements involve.

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We looked at what a compensation system is intended to do. The first and principal aim of a compensation system is to fairly compensate someone who has been injured through the fault of others. A secondary aim is to not overcompensate the claimant. A third aim is to take

all reasonable steps to ensure that the safety of the funds provided for compensation is maintained. Finally, the obligation, we feel, of a fair compensation system is to be efficient.

I may not get agreement from everybody here, because I know there are some lawyers here, but the primary aim of the tort system is not to provide for the care and feeding of lawyers; it is to provide for the fair compensation of justified plaintiffs and the fair defence of justified defendants, and hopefully to make things go smoothly and as quickly and painlessly as possible.

Our experience—and our experience is now coming up on 20 years of medical malpractice—is that in addition to the settlement costs we pay to the plaintiff, the plaintiff's solicitor also gets an additional 10% to 15% as costs. We know as well that the successful plaintiff lawyers generally work on a contingency fee system, so they get an additional sum of monies for their work from their own client.

We're coming now to my points about the common objections to structures, and there are basically five. One of them is that you can't change a structure once you set it up. The second one is that the complexity and litigation created by arguments over and impositions of a structure will result in greater legal expense. The third one is that it goes against over 200 years of common law. The fourth is that there is an inability to pay for new and revolutionary treatments if they do arise, because you've already set up the structure system. And fifth—possibly not too major an objection—is you may find that the insurer who issues the structure may go bankrupt and be unable to make payments.

All of these do have some validity as objections, but when you take a look at them one by one you can see that the way structures are set up, as proposed by the amendments to the Courts of Justice Act, these objections are pretty much overcome quite well.

First of all, the objection that you can't change it once you set it up—well, that's pretty much the system with any settlement at present, whether it's a lump sum payment or a structured settlement. I did have the opportunity to watch Mr. Howe from the Ontario Trial Lawyers Association make his presentation here. He's a very good speaker, far better than I am. He mentioned that once a structure agreement was set at \$2,000 a month, that was it—there was no provision for inflation and/or other increases. That's not really correct under the provisions of the proposed amendment, because it specifically allows for inflation to be calculated into the structured settlement.

There is an argument that complexity in litigation is created and will result in greater legal expense. I can handle that a couple of ways. My thoughts are that because most plaintiff solicitors are compensated on a percentage basis of the ultimate settlement, whether they spent an hour or whether they spend 100 hours on a case doesn't really matter too much.

My second, and the real observation here, is that complexity already exists. At the mediations I've

attended, at the trials I've attended, at the pretrials I've attended, I've listened to hours of discussion about what the right and what the wrong way of calculating dollars and calculating lifestyles and lifespans is. Structure, here, has an advantage, because you can get a quote on a structure—a certain amount of money will buy you a structure of, say, \$1,000 a month for life. You put all of this argument out to the market and you get the insurance companies who are providing the structures to give you the quote, and that's the value of the structure—that's how much the structure is going to cost.

We can argue about the expected lifespan from here to eternity, if we want, in the pretrial and in the trial sections of the court, but the end result is going to be that if you want to purchase a structure, you have to enter into a contract with the life insurance companies which provide the structures, and they're not bound by the provisions of the court to assume that the plaintiff is going to live for 60 years or 65 years. They're going to put the medical information out to their specialists, who are going to come up with a fairly conservative estimate, and by "conservative" we mean a long-lived estimate. They're going to charge a price to ensure that they can make enough of a profit on these structures to carry on business. They do make a profit, because if they didn't, they wouldn't offer these, but the analysis that you can perform shows that the profit they make is less to HIROC, to the health care system, than is the cost of the lump sum payments with gross-ups. In essence, having the structure actually reduces the legal arguments.

I've heard that it also tosses out 200 years of common law, and that's kind of an interesting observation. I think that we have to assume that the financial system in Ontario was not quite as advanced 200 years ago as it is now. It didn't permit contingency fees, it didn't permit class actions, and these are all things that the government has quite rightly decided should be overseen and should be approved.

The reason you're here is to modify, codify and institute new law, not just accept what the courts have said. Later on, I have included the relevant extract from the Supreme Court of Canada decision, *Andrews v. Grand & Toy*, and it mentions this latter point in particular.

The inability to pay for new treatments if they become available is not prevented under the amendments that are proposed. The judge hearing a case can clearly make provision for this if he or she so desires in the form of an additional sum that could be set aside. I think that those areas are pretty well covered.

Finally, the risk that an insurer can go bankrupt can be dealt with in several ways. When we purchase a structure in our settlements, we always have it insured by a second insurer who undertakes that if the first insurer who's providing the structure should go bankrupt, the second insurer will take over the payments, so in effect it's a guarantee of the ability to meet payments. The judges we have dealt with are very happy with this concept because it does provide additional certainty that the required payments will be met and the judge then doesn't have

much of a problem in approving a structured set-up. It has an additional advantage of allowing an organization like HIROC to take the structure off its books.

So there are several advantages of structures. You've heard the CMLPA presentation—very impressive and I don't think I can improve on it. In summary, it allows for a much more accurate matching of costs and expenses. Accountants like that; I like that. It increases the safety and security of funds because they are going to be there when they're needed. There is not the risk that a lump sum will have been dissipated in either rather poor investments or by rather poor decision-making early on in the process of spending it. The structure does lead to very significant cost reductions. As you heard in the final portion of the CMLPA address, it does effectively end the provincial transfer payments to the federal government in the form of gross-up, which I think is not a bad thing for you folks to aim for. The competitive market and the government supervision of the suppliers does tend to ensure that lower costs, commensurate with safety of funds, is going to be realized. You'll see a reduction in your total legal costs. This is me; I'm the guy who signs the cheques for the lawyers, who's telling you that I fully expect to see structured settlements leading to a reduction in legal costs, not to an escalation of legal costs. We believe it's fair to plaintiffs and defendants alike.

What kinds of savings can be expected? CMLPA has published data and you've heard it today, suggesting that imposition of this would result in savings of just under \$3 million annually from their budget. We don't experience the same types of claims as CMLPA does. Generally, those claims with structure components for us tend to involve newborns, and there are other provisions in the Income Tax Act which reduce the need for lump sum payments up to the age of 19 years. But in the cases the CMLPA is concerned with primarily, these are adult plaintiffs who have been injured. We don't see too many of those in the hospitals, because the doctors hold the scalpel. As a result, our suggestions and our research indicate that our savings would be about a third of the CMLPA's savings of just under \$1 million a year. That is a fast and dirty estimate.

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Finally, because *Andrews v. Grand & Toy* has been mentioned several times in the presentations, I included a copy of the relevant extract from Mr. Justice Dickson in this and I took the opportunity to emphasize the portions which I think are of interest to you. Those portions are the following: "... both dictate that the appropriate body to act must be the Legislature rather than the courts. Until such time as the Legislature acts, the courts must proceed on established principles to award damages which compensate accident victims with justice and humanity for the losses they may suffer."

My suggestion is that structured settlements also compensate accident victims with justice and humanity for the losses they suffer. In view of the cost considerations, it is our recommendation that the provisions of Bill 14 as they relate to section 116 of the Courts of

Justice Act be passed by the Ontario provincial Parliament.

Madam Vice-Chair, I thank you very much for the opportunity and I'm open to questions.

The Vice-Chair: Thank you very much, gentlemen. We have about four minutes for each side. Mr. Kormos, would you start, please?

Mr. Kormos: Thank you, gentlemen. I understand the argument. I appreciate your submission.

Mr. Boyce: Thank you, sir.

The Vice-Chair: The government? Mr. Balkissoon.

Mr. Bas Balkissoon (Scarborough-Rouge River): Thank you for your presentation. I just have a couple of questions. In terms of statistics, can you provide us with your particular plan right now? What is your success rate in the courts, given your structured plan versus a lump sum?

Mr. Boyce: Absolutely, and this is a point which I guess has not been stressed yet. The Ontario justice system is actually very efficient, because only a very small percentage of cases that begin actually make it to the trial stage. That means that most cases are either abandoned or settled well prior to trial. What this means in terms of the provision of structures is that at present it is very difficult to secure a structure on a settlement without the threat of going to trial. This, I think, is one of the principal reasons why it makes so much sense to slightly modify the Courts of Justice Act, as section 116 does, to make it the presumption that structures will be offered, as opposed to that lump sum payments shall be made.

We don't take most of our cases to trial. When we go to trial, our success rate at trials in anything other than Small Claims Court cases is 100%. We expect that to change, but the reason it's 100% is that we believe in making prompt, fair settlements where settlements are warranted. Our experience is that basically maybe far less than 2% of our cases go to trial. I'd say less than 1% of our cases go to trial.

Mr. Balkissoon: My last question is, in terms of structures, if the person has suffered the consequences of malpractice or whatever, are there clauses in the structure that have a payout at the end if that person passes away early and they've got young children left or a spouse who has not been working? Is there a lump sum or a continuing payment to, say, age 19 or as long as the spouse is alive, some type of beneficiary?

Mr. Boyce: There can be provisions. I would point out that the amendment makes some specifications as to what can and cannot be awarded. I think a lump sum payment at the end might not meet with the approval of the courts. If it doesn't, then the court would be quite free to make a payment or to find that a lump sum payment for that type of matter is justified. You can purchase structures which are tied in not just to the life of the claimant but also to the life of the spouse and, if you wish, to the life of the children. It's a very good point, because you want to make sure that the interests of the plaintiff are properly protected. I believe that this type of

structure as contemplated by the legislation is quite capable of meeting those concerns.

Mr. Balkissoon: Thank you very much.

The Vice-Chair: Ms. Elliott.

Mrs. Elliott: Thank you. As I indicated in my comments that you may have heard with the previous presentation, I do know the value of structured settlements in many situations. If it's mandatory, my concern is with respect to flexibility. If a person's circumstances change, perhaps several years after the structure is established, and perhaps they want to buy a house and equip it with an elevator and make it wheelchair accessible—and all of those changes, as you know, are extremely expensive—how would a structure be able to deal with that, or would they, if it only provides for periodic payments?

Mr. Boyce: There are two answers. The first is, you probably can set up a structure for that if you wish because you could have the structure change the value it pays in 10 or 15 years as the needs of the patient change. Many of the settlements that we have will have one annuity that goes for 10 years and then another annuity will start up at a different rate of payment simply because the needs of the plaintiff have changed and we have to recognize that. So you can set up a structure to do that. I think the best response is, though, that a good plaintiff counsel will have recognized these needs in future for his or her client and will have made this a condition precedent to any successful resolution, that this be recognized either by a payment or by a provision in the annuity, possibly by the lump sum payment that you had contemplated at the end of some structures.

The Vice-Chair: Thank you very much, gentlemen.

PROFESSIONAL AND INDUSTRY ASSOCIATIONS REPRESENTING THE ONTARIO CONSTRUCTION SECTOR

The Vice-Chair: If the Professional and Industry Associations Representing the Ontario Construction Sector could please come forward. Good morning, gentlemen, and thank you for coming in. You have 30 minutes for your presentation. You can use the entire 30 minutes or you can leave time for questions and comments by members of the standing committee. Before you start, if you would please introduce yourselves for the record.

Mr. Charles Simco: My name is Charles Simco. I'm counsel to the Ontario Association of Architects. With me are, on my right, David Frame, who is president of the Council of Ontario Construction Associations and, on my left, Tim Hutzul, who is attending on behalf of Ontario's general contractors and is an in-house counsel at Aecon construction.

The Vice-Chair: Thank you. If you would proceed, please.

Mr. Simco: We appreciate the opportunity to make these submissions to your committee today with respect to Bill 14. Our submissions are made on behalf of the Ontario construction sector. When the issue of Bill 14 arose, a number of stakeholder groups involved in the construction sector came together to consider the proposed amendments and to forge a consensus position. Our written submission, which I understand you have before you, has been filed and is the outcome of that process.

Our group includes the design consultants of Ontario through their respective professional associations, Ontario construction associations from across the province, Ontario general contractors, the Ontario surety industry and other organizations connected with the construction sector.

As I mentioned, we filed our written submissions but they are 17 pages long, and I will attempt to summarize the key points and then welcome any questions or comments which will help clarify our position for you.

Our position with regard to Bill 14 may be summarized under three points: First, the construction sector places a high priority on maintaining an ultimate 15-year limitation period under the 2002 Limitations Act which cannot be varied or excluded by agreement for unknown claims. So that is the first of our three concerns. Secondly, we support the reinstatement of tolling agreements to enable parties to suspend the two-year and 15-year limitation periods for known claims. Thirdly, we do not oppose an amendment of the 2002 Limitations Act which would allow parties who are not consumers the right to vary, by agreement, the two-year discoverability period.

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Having given you that condensed version, what is the practical effect of these three points?

First, our position is that the 15-year ultimate limitation period under the 2002 act should be preserved. So we keep it. Second, parties can however agree to extend or suspend a known claim—in other words, a claim which is discovered before the 15-year expiry date. Thirdly, nothing can allow the 15-year period, in our submission, to be extended unless it is for a known claim and the parties have entered into a tolling agreement. So if you don't know about the claim before the 15-year period is up, it expires. It's gone. If you know about the claim before the 15-year period is up and you're concerned about your right of action running out, then you can enter into a tolling agreement, which is really an unusual expression for a suspension agreement. It keeps the limitation period open for an agreed-upon period on agreed-upon terms so that, in effect, the 15 years is now stretched out, as the parties have agreed. Fourthly, the practical effect of those three issues is that the two-year limitation or discoverability period under the 2002 act could be varied by agreement, provided that you are not a consumer. Under the current legislation, of course, the two-year period cannot be varied, which has led to some of the proposed amendments. So under our proposal, we

would submit that the two-year period would be allowed to be extended by agreement. We're differentiating the two-year from the 15-year, because we emphasize that the 15-year period should not be allowed to be extended except for known claims, whereas the two-year period could be varied, up or down, whether the claim is known or not, as long as it doesn't surpass the 15-year ultimate limitation for it. That 15-year period is like a ceiling, and nothing can go above that unless the tolling agreement kicks in.

How do we rationalize our position and how did we get to this consensus in the construction sector?

First, some background: Prior to the 2002 act, litigants had to contend with what amounted to indefinite limitation periods. For example, it was not unusual for an architect or an engineer or a construction company to be met with a claim 20 or 30 years after a project was completed. This state of affairs created real hardship for defendants in the construction sector, who would be caught off guard by such claims, usually in circumstances where they did not have insurance coverage or adequate coverage for this old claim. They likely had lost or disposed of their records and documents related to the project, witnesses were no longer accessible and memories had faded in any event. This would be the circumstance that a defendant or defendants would find themselves in when there was a problem with a building, say 20 or 30 years after it was completed. Under the pre-2002 legislation, there was the ability to launch these claims, and then there would be a major legal proceeding to determine whether the claim should be allowed to go ahead. This would result in heavy legal costs for the parties and would use up a lot of court time, each side trying to either advance or prevent the advancement of the claim.

But the root of the problem was the uncertainty fostered by an indefinite claims period under the pre-2002 legislation. If people are allowed to do something, they'll go ahead and do it and try to pursue their interest, but the 2002 act recognized that this was not an acceptable state of affairs. It corrected the problem created by the indefinite claims period by establishing a 15-year ultimate limitation period. The construction industry and others could order their affairs regarding insurance coverage, documents retention etc. with certainly that liabilities related to a project or a transaction would come to a clear end after 15 years.

The notion of being allowed, however, to contract out of the 15-year limit under the 2002 act was, in fact, first raised in the period leading up to its passage. The construction sector was consulted at that time regarding the possibility of inserting a contracting-out provision in the 2002 act. At that time, the construction sector stated emphatically, "No, that should not be allowed." Why should that not be allowed? That is basically for two reasons: Contracting out would lead once again to indefinite limitation periods. As in the pre-2002 act situation, there would be no clear end to liability, so you

could then once again have the potential for 20- or 30-year claims.

Secondly, the construction sector would be unable to avoid the contracting-out option due to what I refer to as an inequality of bargaining power. What does that mean? Well, the way the industry operates is that owners who invite tender bids for public buildings, institutional buildings, schools, hospitals, public infrastructure or private concerns have the ability in their tender documents—invitations for tender or RFPs—to embed or impose contract terms and conditions on contractors bidding for work. It's presented to the industry as a package: "If you want to bid on this project, we welcome your bid, but here's the contract." If contracting out of the 15-year period were allowed, then your contract, which you're now submitting your bid on, would include an extended limitation period. It's just the way the system operates. In a competitive environment, the bidders are under pressure to submit qualified bids. They can't tinker with the owner's standard terms and conditions, otherwise their bid will be rejected.

This is a very key element behind the concerns of the construction sector regarding the notion of being allowed to contract out of the 15-year period. It is really a problem for the industry if that were to be permitted.

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The ultimate 15-year limitation period which could not be varied by agreement eliminated that problem. That was the response under the 2002 act to that problem after consultation with the construction sector. Changing the status quo under Bill 14 would be highly regressive for the construction sector. Therefore, a lot of thought has been given to what would make sense, what would provide some added flexibility to the 2002 act to enable everyone to work with it. What we were then led to was to allow a suspension or extension of the 15-year period for known claims if the parties agree.

What is the distinction between "known" and "unknown"? I know you've heard me use—and I'm trying to emphasize the significance of "known" and "unknown," and I keep saying that the 15-year period could be extended for known claims. Well, in the case of a known claim, it means that within that 15-year period something has collapsed, something has leaked, something has burned down; there has been an occurrence which has led to a claim related to a construction project. At that point, this whole business of inequality of bargaining power is no longer a problem, because you've got two parties: one a plaintiff-owner, the other a defendant-contractor etc., who can decide how they're going to order the resolution of this dispute, and they're doing so on a level playing field. So they can agree to extend the period on terms, or if they can't agree, then the owner has the ability to commence its action within the 15-year period. But the ultimate ceiling is that, barring any agreement to extend, at the 15-year period, the claim is dead; it can't drag on and on and on.

We have gone through a consultative process with other parties who we understand have an interest in

amendments to the 2002 act. In fact, we were informed as a group many months ago of some other interested parties who wanted to support the notion of being allowed to contract out of the limitation periods. We have met with a number of these parties. We have spoken with them. We have exchanged views. We believe that the outcome of that process has led to certainly not a formal consensus but to something approaching a common understanding of how these issues might be addressed, with one side perhaps at the beginning wanting complete flexibility to contract out of the limitation periods, and with our group at the outset wishing to maintain the status quo.

We travelled along a path of achieving what we regard to be something approaching a consensus—that is what I have already described to you, and it is set out in our written submissions—and that is that the 15-year period ought to be maintained, but it can be extended for known claims. The two-year period, which under the 2002 act cannot be varied by agreement, we have come to recognize, should be subject to greater flexibility. We thought that this was a primary issue for some of these other groups who were concerned about the two-year period sort of hemming them into a short limitation arrangement.

What we came to in terms of our internal discussions and our exchanges with these other interested groups was that we were prepared to accept that the two-year period should be opened up to greater flexibility, recognizing, however, as stated in Bill 14, that it should not include consumers. It should be opened up to everyone except consumers, and I believe that was the direction of Bill 14.

We have also reviewed the legislative approach taken by other provinces, and what we learned was that two other provinces have recast their much older limitations legislation, similar to Ontario's major revision in 2002. They include Alberta and Saskatchewan.

It's interesting to actually see what they've done because it sort of shows that these issues have already been considered in other forums, in other jurisdictions.

Alberta adopted a shorter ultimate limitation period in its legislation. It was a 10-year period. Alberta allowed parties to agree to extend it. There was not an ultimate limitation period in Alberta.

Saskatchewan, however, legislated a 15-year ultimate limitation period and prohibited any extension of it by agreement. Even the tolling agreement that we are referring to here would be a distinction from the Saskatchewan model, which says 15 years and that's it, and you can't agree to go beyond that. But it did authorize agreements to extend the two-year discoverability period under the Saskatchewan legislation. That is similar to where we have arrived in terms of our submission. They distinguish, as we have come to distinguish, between the two-year period and the 15-year period. Our model is a little more flexible on the 15-year period than Saskatchewan but less than Alberta.

We submit that the Saskatchewan act is basically the correct approach, as it fairly balances the interests of

plaintiffs and defendants and again provides certainty to how long a claim can survive. Fifteen years, they say, should be long enough for someone to figure out if they have a claim or not, and then, in the public interest, in fairness to defendants, the time is up after that.

A few words about the 15-year period: It should be noted that it was enshrined in the 2002 act following an exhaustive consultative process by the drafters of that legislation, with—according to the debates in the assembly at that time—consultation of over 100 organizations in different sectors, including the construction sector. Fifteen years was considered to strike the proper balance between plaintiffs and defendants, and we submit that it ought to be maintained. There's no reason to change that period. It's long enough, again, for a party to fairly determine whether or not it should proceed with a claim. As stated several times already, the tolling agreement would in fact create the possibility of further extending the 15-year period by agreement.

We have attempted to distill our submissions into proposed language which is set out starting at page 3 of our submissions. At the risk of appearing presumptuous, we thought it would, in a very clear way, demonstrate what we regard to be the practical application of our position in actual legislative language.

Subsection 11(2) on page 4 of our written submission—it's the underlined portion—addresses the proposed reinstatement of tolling agreements, and so it makes reference to parties being able to enter into agreements as set out in that section. If there are any questions regarding any of this, please don't hesitate, but I won't start reading the sections to you.

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Subsection 22(3), at the bottom of page 4, addresses the proposed amendment to allow parties who are not consumers to vary the two-year limitation period.

Subsection 22(4), on page 5 of the brief, addresses the proposed amendment to prohibit any contracting out of the 15-year period.

That is, in essence, our submission to you this morning. Thank you for listening. If you have any questions of any of us, we certainly welcome them.

The Vice-Chair: Thank you very much. We have eight minutes left for questions and comments, starting with the government.

Mr. David Zimmer (Willowdale): Thank you very much. I've had a chance to go over your submissions. Thank you for taking the time to organize your thoughts so constructively. We'll consider them very carefully.

Mr. Simco: Thank you very much.

Mr. McMeekin: I was curious about your juxtaposition of the 15-year/two-year. Was that seen as a pragmatic, moving-forward kind of compromise?

Mr. Simco: It was an effort to understand what other parties were actually getting at when they said that they were not in favour of the current regime. We understood that the two-year period was really their sore spot. The 15-year period wasn't presenting a problem for them but the two-year period was. In that respect, it's a bit of a

compromise. We would have preferred to have retained the two-year period but we were, again, attempting to achieve a consensus.

Mr. McMeekin: So your suggestion is to extend that period with respect to a defined claim.

Mr. Simco: The idea would be to maintain the two-year period but enable parties to contract out of it. So the act would remain the same except that there would be a provision which says you can extend it up to 15 years.

Mr. McMeekin: I like that thrust. Thanks.

Mrs. Elliott: I also think that the distinction between the known and unknown claims is a very sensible way to go, and also your clarification, for persons acting "for business purposes"—switching that to consumers with a known definition is also very helpful, so thank you very much for that.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: I remember well the day that the Limitations Act passed in the Legislature. It was an interesting course of events. Architects down where I come from were very supportive of the Limitations Act that passed.

Mr. Simco: Absolutely.

Mr. Kormos: I'm from small-town Ontario. Ms. Drent, will you please give us a little one-pager on tolling agreements?

Ms. Margaret Drent: Certainly.

Mr. Kormos: I never heard of them before in my life; I really haven't. But then again, I'm not particularly well-travelled or well-read so you've got to understand. A sheltered life, I suppose.

The problem is, your interest in wanting to be able to contract out of the two-year is to be able to be competitive in the course of tendering/bidding on jobs, right?

Mr. Simco: Yes.

Mr. Kormos: Let me put on, in this perverse moment, a right-wing, hyper-capitalist hat and say—

Mr. Zimmer: That's a change.

Mr. Kormos: Well, as I say, it is a perverse moment. Here you are, arguing for the right to contract out of the two-year—and I understand how that's a little more benign in its impact, right?

Mr. Simco: Yes.

Mr. Kormos: You want to be able to contract out of the two-year to be able to have competitive advantage, and here in this free enterprise world, you want to tell other people they can't contract out of the 15-year. It seems to me that if you've got two mature parties/entrepreneurs who presumably know what they're doing—but, for the life of me, I read the financial pages and I'm insistent that so many have no idea what they're doing. But you don't want them to be able to have competitive advantages by contracting out. Do you understand how I have—and I understand the difference between the 15-year and the two-year.

Mr. Simco: Yes.

Mr. Kormos: Now, the two-year is somewhat more benign, but here you are, entrepreneurs, free enterprisers; you don't necessarily want the protection of the state to be binding when it comes to the two-year, because you

want to be competitive, but boy, you want the state to be there and bind parties to 15 years, because you don't want to compete at that point. Is there a response to that modest dilemma on my part?

Mr. Simco: Yes. First of all, I caught your reference to tolling agreements, and when I first heard the expression, I thought it had something to do with a highway.

Mr. Kormos: Well, the Burlington Skyway tollbooths were shut down years ago. I remember them.

Mr. Simco: But you can just put the word "suspension" in place of "tolling." It's a suspension agreement and that's pretty much it. But with respect to your point, my view—and I'm a litigation lawyer and I can tell you that at some point people have to understand that they've got to give it up in terms of being able to launch a claim, because it becomes counterproductive. The point we were trying to make in our submissions is that after 15 years, entrepreneurs or non-entrepreneurs, it becomes an exercise in futility for a court to try to figure out what happened 15 years ago, for witnesses who have since died or disappeared to be able to testify. It really becomes a matter of justice and access to justice.

Mr. Kormos: You get no quarrel from me in that regard. I understand that argument.

Mr. Simco: Right, but how do we respond to an entrepreneur who's saying, "Well, I can do it for the two-year; why can't I do it for the 15-year?" The answer to that is that in the general public interest, it is recognized that after 15 years, barring the arising of a claim, you've lost your right. However, having said that, in the case of the construction sector, let me tell you that at key junctures, like at the end of a warranty period or approaching the end of a limitation period, it is certainly open to the parties—and many take advantage of this—to hire an engineer or an inspector to go on-site and say, "We need your opinion as to whether there is any evidence of a problem with our project, because if there is, we have to commence our action now." In other words, you see, the onus shifts. The onus shifts to the party with the potential claim to figure out whether they are going to proceed or whether they have a claim to proceed with—it requires some initiative on their part—as opposed to someone sitting back and 30 years later noticing some bubbling somewhere and then probing into it and starting an action after everyone has gone.

I think the answer to your comment is that it is open to the entrepreneur to take control of the situation and make a decision as to whether they're going to invest in a potential claim or not. I don't know if that has answered your question.

Mr. Kormos: Just very briefly, if your argument is on behalf of the integrity of the judicial system or the capacity of the judicial system to handle these sorts of claims, what if that same contract provided that any dispute was going to be resolved by way of private arbitration? There's no longer a public interest, right?

Mr. Simco: Right.

Mr. Kormos: The parties themselves will set up the forum. They'll bear the cost. You won't have over-worked judges burdened with these cases where evidence is obscure. What about a case where a person wants to very privately agree not to submit to the 15-year limitation period but who, furthermore, will agree that any dispute is to be resolved in private arbitration? There will be no recourse to the public court. Wouldn't that address your concern, which I share, about how the court system handles 15-year-old-plus claims?

1030

Mr. Tim Hutzul: If I can address that as well, our proposal would allow parties for known claims to go beyond the 15-year period, but the problem, even in your solution with private arbitration, is the tremendous cost to people in terms of human capital, storage, litigation costs, insurance costs for maintaining the records and much of the construction work that's done in the province of Ontario. I represent one of the largest construction employers in the country, but much of the work that's done even through us is done through small sub-trades, so asking those types of companies to carry these types of records and insurance and other costs past the 15-year period makes it very uncompetitive. There are problems already in this province with the huge infrastructure deficit and Alberta acting as a magnet, drawing people away from the construction industry in Ontario.

I can tell you from personal experience, we've had a couple of claims that were almost 30 years and 50 years in duration. Obviously, you can appreciate that the people are long gone. At that point it also, in my view, calls the administration of justice into dispute, because it comes down to a record-keeping process and whoever has the box in storage. Our company has a huge amount of storage costs for boxes and boxes of things, going back 15, 20, 25 years. It's not in the interest of anybody in the province to have that happening.

The Vice-Chair: Thank you very much, gentlemen. The time has expired.

Mr. Kormos: Chair, I'm wondering if Ms. Drent from Legislative research or her counterparts could get for us any written explanation via the ministry as to what drove this amendment, because we haven't heard yet, insofar as I'm aware, from advocates for the amendment. Similarly—and Mr. Zimmer may help in this regard—if we could get somebody from the ministry—policy people—to specifically address the rationale, the *raison d'être*, behind these amendments: Where it comes from, who it's serving and whether indeed it is simply an expression of unhampered Wild West free enterprise.

The Vice-Chair: Thank you, Mr. Kormos, and thank you also, gentlemen, for coming in this morning.

CANADIAN BANKERS ASSOCIATION

The Vice-Chair: Could the Canadian Bankers Association please come forward. Good morning, gentlemen. You have 30 minutes for your presentation. If you use up the entire 30 minutes, there will be no opportunity

for questions and comments from members of the standing committee. Before you start, could you please introduce yourselves for the record?

Mr. Warren Law: Thank you. I'm Warren Law and my colleague is Lawry Mitchell, and I'll be referring to both of us in our opening remarks.

The Vice-Chair: Please go ahead.

Mr. Law: Madam Chair, I'd like to thank you and the members of this committee for giving the Canadian Bankers Association the opportunity to appear before the committee on Bill 14. As I said, my name is Warren Law. I am the senior vice-president, corporate operations, and general counsel of the CBA, and with me today is Lawry Mitchell, who is senior counsel with RBC Financial Group. Representing the banking industry as we do, we appreciate having the opportunity to put forward the views of Canada's banks on the issues raised by Bill 14.

Our concerns regarding the bill are specific to the proposed amendments to the Law Society Act in schedule C. While we understand and agree with the intent of the amendments, which is to provide for the regulation of paralegals, we believe that the drafting of the bill could have unintended consequences. In this regard, we believe that the bill needs to be amended to provide clarity with respect to what entails the provision of legal services.

As the bill is currently drafted, a person who is not a licensee would be prohibited from providing legal services except to the extent provided by the bylaws of the Law Society of Upper Canada. The scope of what constitutes the provision of legal services as set out in the bill is very broad and could capture services done by bank staff and agents of the bank. We submit that the activities currently done by bank staff should not be considered to be providing legal services for the purposes of this bill, and that the bill should be amended to ensure that this is the case.

Secondly, we believe that the government, not the law society, should determine the exemptions from the licensing requirement.

The bill sets out the following list of activities that would fall under the rubric of providing legal services: giving a person advice with respect to legal interests, rights or responsibilities of the person or of another person; selecting, drafting, completing or revising certain documentation; representing a person in a proceeding before an adjudicative body; and negotiating the legal interests, rights or responsibilities of a person.

This bill covers a very broad group of activities that a bank would carry on. This could have a negative impact on the banking industry, as the functions listed are often performed by bank staff who are not always lawyers or paralegals.

Let's look at some examples, if you'd like to. Firstly, giving advice: An employee of a bank may explain the terms and conditions of an agreement to a client, although such advice is not held out to be legal in nature. For example, for a consumer entering into a security

agreement related to personal property, branch staff will typically explain the person's responsibilities under the agreement, such as the necessity to advise the bank if the person moves to another province. Furthermore, this provision is so broadly drafted as to theoretically encompass information provided to customers by a call centre of a bank.

Secondly, bank staff often select, draft, complete or revise documentation. Standard documentation is often used by banks. Such documentation would have to be selected or may require certain information to be added by bank staff. For example, mortgage-related documents, guarantee agreements, loan agreements for unsecured credit lines and security agreements are often completed by bank staff. Interim financing on real property may require a standard letter of undertaking or a caveat to be signed. Bank staff may select the standard form of power of attorney for a customer and may input specific bank account information. Banks often provide corporate clients with a standard board resolution for banking matters. Employees in the collections department prepare proofs of claim and notices of objection in bankruptcy matters. Compliance staff often prepare documentation that will be used before an adjudicative body. All of this would be covered by the new bill.

Thirdly, with respect to representing a person in front of an adjudicative body, branch managers often represent their bank in Small Claims Court. This wouldn't be possible under the new legislation unless the branch manager was a "licensee."

Lastly, with respect to negotiating the legal interests, rights and responsibilities of a person, numerous employees of a bank outside of its legal department will enter into contractual negotiations with various parties, including clients and service providers.

The bill, as currently worded, would have a negative impact, I believe, on the consumer and commercial clients at banks, as well as the bank's internal operations, as licensees under this bill would need to be employed or retained to perform these functions, resulting in increased costs and delays.

How can we fix the problem? A review of other provincial statutes provides examples of how this provision could be modified to deal with the concerns that we're raising.

The Alberta Legal Profession Act provides for an exemption for "a person in respect of the preparation by the person of a document for the person's own use or to which the person is a party" and for "an officer or employee of a corporation, partnership or unincorporated body in respect of the preparation of a document for the use of the corporation, partnership or unincorporated body or to which it is a party."

The Nova Scotia Legal Profession Act specifically does not prohibit "any incorporated loan or trust company carrying on business within the province from doing anything that its act of incorporation empowers it to do."

We're making the following recommendations: The definition of the provision of legal services should exclude the preparation of documents for one's own purposes; and secondly, an exemption for persons, and employees and agents of organizations, for any activities which they are empowered or permitted by a government body or act to perform should be provided.

May I say that legislation designed to ensure the integrity of the paralegal profession should not interfere with the internal operations of financial institutions. We strongly believe that the bill needs to be amended to ensure that certain activities that are routinely performed by employees and agents of financial institutions do not fall under the rubric of the provision of legal services. Unless clarity on this point is provided, consumers will be faced with increased costs and delays with no offsetting benefit with respect to consumer protection, as banks are already highly regulated and subject to comprehensive consumer protection regimes.

In closing, we're delighted to have shared with you our views on this bill and possible amendments which will make this bill a more focused and effective piece of legislation. We thank you for providing the CBA with this opportunity to put forward our position and to propose possible solutions to deal with our concerns, and we'd certainly be pleased to take any questions that you might now have.

The Vice-Chair: Thank you, gentlemen. We have 22 minutes for questions and comments, starting with Ms. Elliott.

1040

Mrs. Elliott: I certainly understand the recommendations that you're making and they largely make sense to me, because there are a lot of internal actions that are taken by bank personnel that wouldn't necessarily be considered to be legal work in and of itself. The one thing that does trouble me, though, over and above dealing with internal paperwork is the issue of documents that are to be registered with third party organizations, like real estate documents and, to a somewhat lesser extent, PPSR registrations. I think that is something that perhaps could get caught in some of the issues regarding provision of legal services. We had a discussion about this with a previous presenter, particularly in connection with the mortgage fraud issue.

I'm just wondering how you would propose to deal with all of those issues in order to make sure that they are handled by proper personnel within the organization?

Mr. Law: Perhaps I could start with a response and then I'll turn it over to Lawry, if you have any comments to make. From my standpoint, from a broad industry-level standpoint, I think it comes down to a question of education and training. The one thing that hopefully Lawry will expand on is the fact that the banks make great efforts to make sure that their branch staff are suitably trained to address these kinds of issues. The issue of mortgage fraud, for example, is high on the list of priorities of the banks these days, for obvious reasons. So I think education and training helps. Of all industries,

banks are leaders in this respect, to make sure that the people who deal with the public are suitably trained to carry out the functions that they have.

Another point that you've got to take into consideration is that there is a very extensive consumer protection regime in place to protect consumers. I'm thinking, for example, of the Financial Consumer Agency of Canada. It's specifically there to protect consumers of banks. I think with that taken into consideration there should be comfort about the fact that branch staff should have the right to be able to complete this documentation and not have to worry about the fact that they're licensees under this new legislation.

Mr. Lawry Mitchell: I guess I'd just add to that in terms of some of the third party service providers that banks may engage to provide certain parts of those functions. We're under rules around outsourcing and that kind of thing in terms of when we do employ third parties to do things that ordinarily have been done or could be done internally, and there are all kinds of rules that we have to follow on that in terms of oversight and the ability to do audits from time to time to make sure that they're meeting the standards that we would meet if we were doing it on our own.

Mrs. Elliott: So there's a certain degree of internal control issues there too, I guess, that you have to deal with, especially when you're dealing with, for example, title insurance companies and that sort of thing?

Mr. Mitchell: Exactly.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, gentlemen. This is a red-letter day: I'm agreeing with the submission made by the Canadian Bankers Association on Bill 14. But no, this is a recurrent problem.

Mr. Zimmer: It's all going down in Hansard.

Mr. Law: Mr. Kormos, you may or may not remember this, but this is the second time in 2006 that I've appeared before a legislative committee and you've agreed with the position of the bankers. I'm doing well here.

Mr. Kormos: Yes. This is a recurrent theme because of the difficulty in drafting the description of what constitutes legal services. I understand what the drafters wanted to do—I think everybody does—but it creates huge problems. There's the paragraph (b) exemption by bylaw. Inevitably, there are going to be people omitted, just because of human nature, in the bylaw that exempts people. I'm wondering if research could help. As you're a federally regulated industry—and you too might address this—does that interfere in any way or address the extent to which you can be regulated by—because this is a regulatory regime that's being imposed on people doing this. Do you think there are any issues in that regard?

Mr. Law: Just to expand on what you've said, under the Constitution Act of 1867, the federal government has exclusive jurisdiction over banks and banking. Arguably, I suppose you could take the position that the branch staff or other personnel of a bank, when they're completing this documentation, are in the process of doing banking.

So you might very well have a constitutional issue here too.

Mr. Kormos: But it would be as simple as the banks arguing that they're not subject to this regulatory regime?

Mr. Law: We could take that position, yes.

Mr. Mitchell: If I could speak on RBC's perspective, I think we're at the point where we're assuming that maybe this is just a bit of oversight or an unintended consequence of it. If the legislation were there and continued to read as it reads, we would then have to pursue things in more detail, like what exactly is advice? Does it really constitute advice when you explain what the particular term means in very objective ways? So there would be more detail to get into, and I suppose there would be an argument around whether or not this effectively is regulating banking by regulating the day-to-day activities of what bankers would do in face-to-face meetings and sessions with customers.

Other than recognizing that that is an issue, it's certainly not something that any of us has looked into in detail, because at this point our intention is to bring forward our concerns and hope that they're addressed.

Mr. Law: The easy answer would be to make the requested amendments and then we don't have to worry about this bill.

Mr. Kormos: I'll repeat my call on Mr. Zimmer to use his influence as the parliamentary assistant to come up with some sort of proposal as to how this is going to be addressed, as compared to merely utilizing subsection or paragraph (b) with the bylaw of the law society, because I'm not sure that that's going to be adequate.

Gentlemen, as suggested by Mrs. Elliott, I suggest we'll be seeing you next when we have some discussions around the Land Titles Act and whether or not banks, as mortgagees, should be able to rely upon a forged mortgage.

Mr. Law: I always look forward to any discussion with you, Mr. Kormos.

Mr. Kormos: Thank you kindly. Take care.

The Vice-Chair: Mr. Zimmer.

Mr. Zimmer: On page 4 of your submission under "Recommendations," the first bullet:

"We make the following recommendations:

"—the definition of the provision of legal services should exclude the preparation of documents for one's own purposes." Let me just focus on "one's own purposes." That's a pretty hard kind of document to define, a document "for one's own purposes," because the fact of the matter is that for the most part, they have an effect on a second party. I'm thinking of branch offices assisting customers in filling out a loan document, a security document. It's being filled out for the bank's purposes to secure a financial interest but it also has an effect on the other party to the document, the recipient of the loan document. I just use that as an example. How would you more closely define this concept of "documents for one's own purposes" in the context of protecting the rights of the other party to the document?

Mr. Mitchell: I guess I would look at it a bit differently. If that is considered within a broader definition of providing legal services, I think to some extent that may be a bit misleading to consumers in particular. There's a lot of training and education that is provided to bankers and account managers who are dealing face to face with the public on some of these things. While it's important that we be able to provide value to our clients, answer their questions and provide advice to them in the broader of sense of, "What obligation am I taking on here?" in an objective description, to go beyond that and suggest that that's legal services—"legal services" usually implies some kind of role where you're maybe advising somebody in terms of obligations with another party. If we were considering that the provision of legal advice, it puts everybody in a bit of an awkward position because, at the end of the day, notwithstanding our interest in making sure that our clients are in the right products and understand the obligations they're taking on, these documents are in fact prepared for our purposes, with our interests in mind.

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A good example of that would be in situations where the nature of the arrangement is such that it's important that a person receive independent legal advice in some situations with guarantees, where the guarantor who has come forward has no obvious connection to or benefit from the loan. They will be required to get independent legal advice from a lawyer who's clearly acting for them. Branch staff could conceivably go through that guarantee and give them an idea of what's involved with that, but we're very careful in these cases to make it clear that the advice we provide at the branch level is more informational only. I think to characterize that in any way as this being a person who is licensed to provide legal services in itself could be misleading.

Mr. Zimmer: Let me give a more concrete example. I'm just trying to get my head around your suggested recommendation here. Sometimes I see in the paper that there are, for lack of a better word, mortgage sales that a financial institution, a bank or otherwise, advertises and the advertisement goes something like, "Come and see us and we can redo your mortgage or renew your mortgage. Transfer it our institution. We do all the paperwork and so forth and there's no cost to you." Of course, when someone is rearranging a mortgage and so on, there are big legal consequences for the borrower. So in this proposed amendment, how do you protect the borrower? Clearly, the institution is doing the mortgage documents to secure their interest and yet there are significant obligations on the part of the borrower. In that case, would that be the preparation of a document for one's own purpose or not?

Mr. Mitchell: The mortgage area is covered more directly with some of my colleagues, so I'll answer to the best of my ability. My understanding is that on those things, the mortgage documents are prepared by lawyers in the same manner of lawyers acting for the bank and for

the borrower in preparing and registering mortgage documents.

Mr. Law: I don't think we're suggesting that the protections given to the borrower in that situation would be reduced as a result of what we're proposing. I think it's still very important for the borrower to get independent legal advice or legal advice from a qualified lawyer; no question about it. I think our concern is, though, that when you apply the definition under Bill 14, it's going to capture the work of actually preparing the documentation, filling in the blanks, the dates and stuff like that, and I cannot believe that Mr. Heins at the law society wants to have jurisdiction over that kind of stuff.

Mr. Zimmer: Maybe actually tackling some language that would cover that preparation of documents for one's own purposes would be a helpful exercise.

Mr. Law: Yes. That's why we pointed you to the ways in which two other provinces have addressed the issue. You've got specific legislative wording there.

Mr. Zimmer: All right. Thank you very much.

The Vice-Chair: Thank you, gentlemen, for coming today.

SOCIETY OF ENERGY PROFESSIONALS

The Vice-Chair: If the Society of Energy Professionals could come forward, please.

Mr. Kormos: Madam Chair, while these people are seating themselves—again to legislative research—I'm concerned that we're getting drawn into a sort of mindset of regulating anything and everybody who prepares legal documents instead of focusing on paralegals, and we know what we're talking about when we're talking about paralegals. I'm wondering if legislative research could, with the assistance of the library and others, find out whether there have been concerns expressed about the conduct of bank officials—because I don't think this has been an area of problem—the conduct of any of these other numbers of personnel who in fact do legal services as defined currently in the legislation; if she could perhaps give us an overview of whether or not this has been the subject matter of concern, of problem, of complaint, because I don't think it has. I think we're getting drawn, as I say, into looking at this from this broad, big net perspective instead of focusing where we should be focusing, and that is on paralegals.

Mr. McMeekin: Could I just add to that, because I think my colleague Mr. Kormos is on to something? I would appreciate, as part of that review and narrative back to us, any reference to what other legislation—the Bank Act, for example—might supersede something we're doing, could potentially supersede or provide the kinds of controls that we, on a good day, are claiming we want to see in place in this bill.

Also, the other interest that I have is around consumer protection, liability protection if something goes wrong in, say, a banking setting. I heard the gentleman say there are all kinds of protections there. I'd like to know a little bit more about what those protections are.

The Vice-Chair: Good morning, gentlemen, and welcome. We have 30 minutes for your presentation. If you don't use up the entire 30 minutes, there's an opportunity for standing committee members to ask questions or make comments on the presentation. Before you start, please introduce yourselves for the record.

Mr. Blaine Donais: My name is Blaine Donais, and I'm a society staff officer. With me is Brian Robinson, the society communications officer.

Interruption.

The Vice-Chair: We'll give you the opportunity to take care of that.

Mr. Donais: Sorry about that.

The Vice-Chair: If you would proceed, please.

Mr. Donais: The Society of Energy Professionals represents 7,000 engineers, professionals and supervisors in the province of Ontario, in both the provincial and federal jurisdictions. From our interpretation of the legislation, we estimate that about 400 of our representatives and staff might be covered under the Access to Justice Act.

I wanted to say right off at the start that the society does support the regulation of paralegals. In fact, in the workplace environment, unregulated paralegals tend to run rampant and have caused all kinds of concerns for both labour organizations and employers, especially within the human rights paradigm. Now some of that is being taken care of.

But our concern really relates to the interplay between the definition of "legal services" in the act and how that will affect the work that we do as a collective bargaining agent and how we see the work is being done for employers in a workplace setting. Our concerns can really be set out in two general categories. The first is that the regulation of non-fee-for-service providers of what the act considers to be legal services will fundamentally undermine the delicate balance in the collective bargaining relationship. The second concern is that if there is going to be an exemption for those people working in the workplace setting, that exemption should not come from the Law Society of Upper Canada, but should come from the government itself for a variety of reasons.

Mr. Kormos said it was a red-letter day with regard to his agreement with the Canadian Bankers Association. I think you'll find that collective bargaining agents all around the province would find themselves in the same position today, probably for the first time, being in full agreement with the Canadian Bankers Association about the nature of the act and how it interferes with the work that is done by both employers and unions in a collective bargaining environment.

1100

It sounds like you've heard many times in many different settings from many different groups this concern about the definition for "legal services" and how that has an impact on them. Our understanding is that over the last 10 years or so, there has been a lot of discussion about the regulation of paralegals and that it wasn't until

very recently in the act itself, in the bill itself, that there was a change from the term “paralegal” to “person who is authorized to provide legal services,” and that’s where we found a serious problem for union representatives and for employers. Normally, employers speak for themselves, but we find ourselves in the position today where in a sense—because of the nature of the collective bargaining relationship—we’re forced to speak on behalf of employers in addition to ourselves.

The areas in the definition that give us concern include subsection (5) in general, which casts a very, very broad net over legal services. It says:

“For the purposes of this act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.”

Subsection (6) sets out a number of specific circumstances—for example, giving advice with regard to legal interests, rights or responsibilities; selecting, drafting or revising documents that may affect the legal interests, rights or responsibilities of a person; representing a person in a proceeding before an adjudicative body; and negotiating the legal interests, rights or responsibilities of a person.

I could probably spend the better part of a day going through the litany of examples where not just full-time paid union staff people but also part-time union representatives would be covered under this definition. Any union representative who takes on a grievance for a member is in fact negotiating that member’s legal interests under a collective agreement. A collective agreement is a legally binding contract between the employer and the employee that sets out rights for the members in that agreement.

In our case, where we come up with the number of 400 out of 7,000 members, every union representative would be covered by this act. These are people who have been doing their jobs quite nicely for the last 60 or 70 years without the benefit of the law society coming and regulating them. The proposal under the act seems to be that they would be covered.

The question arises, why not? Why not regulate union representatives? Why not regulate management actors, HR people, supervisors making decisions about collective agreement rights? The whole nature of collective bargaining is that it sets out collective rights for people. Sometimes in bargaining collective rights there are individuals whose entitlements aren’t maximized, and there’s often a balance that has to be struck between different groups in a collective bargaining relationship.

For example, when the union is negotiating with the employer about the difference between a selection process for a vacancy on a seniority basis or on a best-qualified standard, there are going to be two competing groups of interests there among their members. Our concern about this is that if those people negotiating these collective agreements and resolving these grievances are also going to be held to some sort of standard by the law

society or by a regulator on an individual basis and are going to fear that they’re going to have to answer to some other body, aside from the labour relations board, they won’t make decisions that are necessarily in the best interests of the collective.

This gets into the nature of not just collective bargaining but grievance settlement. Often with grievance settlements, some people are going to be happy and some people are going to be unhappy. If a union representative has to face the Law Society of Upper Canada by settling a grievance that’s going to make some people happy and some people unhappy, that’s going to affect the decisions that are being made. On the other end of this, the same can be said for employers. Employers are in the position here where, in essence, they are negotiating regarding the legal interests of employees. Perhaps many of these members would be covered under the act as well: HR professionals, senior managers and so on.

In essence, our concern is that the legislation itself is far too broad with regard to the provision of legal services, that there is no need to regulate union representatives and management representatives in that sense. We do understand that the Law Society of Upper Canada has agreed with unions and employers that this group would be exempted, or that’s what their thinking is at present. That’s all fine and good, but our concern about this is that when you actually dig into the proposals about how paralegals are going to be represented, there are some very significant concerns with the law society regulating these groups, concerns with relegating the decision to the law society about whether they should be exempted or not.

The first one is the more general one that’s been set out already for you by Wayne Samuelson of the OFL, which is that the business of regulating paralegals should not be the business of the law society, of deciding who is going to be regulated and who isn’t. That should be up to the government. As he said, they have some transparency and accountability to the public. Frankly, I have to say, as a member of the law society, that I don’t think that the law society has that same accountability and transparency to the public.

Regarding the decision about whether certain people would be exempted or not, there are some very good reasons for the law society to actually include union representatives and management representatives. The regulation of paralegals is going to be a very onerous financial undertaking by the law society. They’ve recognized that in their task force report and, frankly, I think they’re shooting low on the costs that they think this will incur.

1110

The union representatives and management representatives make up a very large potential pool from which to draw resources. Our estimates are that about 60,000 people in Ontario could be covered as union or management representatives under this legislation, and that is a lot of dues from which to fund a system that was meant to cover maybe a much smaller portion of people in this

business. Perhaps not now, but five years, 10 years down the road when the costs of this start to come to bear, there will be a temptation to start including, as the law society has said, non-fee-for-service providers of legal services because that will increase their funding base.

In addition to that, and with due respect to the law society, this is a group of very intelligent people who do not in general have a strong appreciation for the delicate balance that goes on in a collective bargaining setting in the workplace, so there is likely another temptation there when certain disgruntled employees come to them and say, "Why are these people not being regulated?" that they do start looking at regulating.

Just as a corollary to that is that union representatives especially are already fairly highly regulated. Their duty of fair representation under the Ontario Labour Relations Act requires them to act in a manner that's not arbitrary, discriminatory or in bad faith. In addition to that, there are standards under human rights legislation with regard to their treatment of their own members. And in addition to that, unions are democratic organizations and are also subject to their own membership if they're acting in a manner that's not in the best interests of their membership. There's enough regulation there already, and I think that the 80 or so years of labour legislation in the province has been very successful in regulating them.

The solution we're proposing is a modification of what's already been proposed by the Ontario Federation of Labour. Of course, this solution doesn't go anywhere near covering the whole problem with the act and the definition. I think the Canadian Bankers Association has made that clear. But with regard specifically to union and management representatives, we propose an exemption saying, "This act does not apply to trade unions, their representatives, officers or agents when acting for members and/or employees in a bargaining unit, for which the union has bargaining rights with respect to employment-related proceedings to which the person is or may become a party."

We would encourage you to further amend that to include management actors as well. We're not doing that in their best interests, we're doing it in our own because we do not want management actors to feel constrained by the act in making collective bargaining decisions. That will have as much an impact on the collective bargaining relationship as if union representatives were.

Did you have anything?

Mr. Brian Robinson: No.

Mr. Donais: Okay. Those are our submissions. Thank you.

The Vice-Chair: Thank you very much. We have 12 minutes for questions and comments. Mr. Kormos, if you would start the rotation, please.

Mr. Kormos: Thank you kindly for coming. In terms of understanding your comments in referencing them, the HR professionals were here just yesterday, for instance, so you're bang on in terms of who has interest in this regard.

I suppose the problem is that we may well have lost sight of our target here. I really believe that. We got caught up in the language of the bill, and one of the problems is that the law society hasn't been particularly helpful to date.

I reference the Hansard of April 26, 2006, when I questioned a spokesperson presenting on behalf of the law society about, for instance, mediators helping parties to a mediation prepare minutes of settlement. The response I got from the spokesperson for the law society was, "If you have a mediator who's not a lawyer regulated by the law society and not regulated by any other body, who's serving as a mediator preparing documents, such as minutes of settlement in a dispute resolution process to which two lay people are privy, perhaps the answer to the question is, they should be regulated ... such as the law society...."

That caused me and a whole lot of other folks great concern. I'm not sure that's what the law society really means. I don't know, but that's what they've said.

The exercise isn't about regulating mediators, shop stewards, members of negotiating teams or human resource personnel; it's not even about regulating jail-house lawyers, and they're a dime a dozen. Go into any coffee shop and there'll be people offering up free legal advice, right? It's not even necessarily about ensuring competence, because the law society hasn't been able to ensure competence in the legal profession. They won't be able to ensure competence in the paralegal business and nobody should expect them to. They can hope that they will but it's not going to happen.

I really appreciate your comments. You're expanding this, because everybody who comes here adds a little more to the almost absurdity of this hyper-broad definition. I'll bet you dollars to doughnuts that nobody in convocation or in the law society would have, while drafting the bylaw exempting people, thought about shop stewards or people on negotiating teams—volunteers on negotiating teams who engage in collective bargaining. I'll bet you dollars to doughnuts that not one of them would have thought of those people, and not through any fault of their own.

Mr. Zimmer.

Mr. Zimmer: I'm listening.

Mr. Kormos: Justice Cory defined paralegals in his paper, in his report. Let's get around to focusing on paralegals. Let's start with the target and then talk about how there might be loopholes we can close—do you understand what I'm saying?—rather than cutting the choke off a shotgun so you've got a spray of pellets that's a mile wide, and what the heck, in the course of doing that, we may have regulated some paralegals too. It just seems to me to be ass-backwards, as we say down where I come from in Niagara. My apologies to the propriety of the distinguished members of this committee.

I appreciate your comments very much.

Mr. Donais: Thank you.

Mr. Kormos: I think they're bang on. I hope we can get something done. It's up to the government, at the end

of the day, and the sooner the better. You've got more important things to do.

Mr. Donais: If I could just add one thing to what you're saying. One of the answers has been that union representatives are not covered under the act because they're not paid, but that's not true, because what union representatives get is paid release time. They could very well be covered under the act. Just like mediators in this circumstance, they could be in the position where they are in fact helping to draft documents for "lay people"—they're lay people themselves in a sense—so they would be covered. A member of the law society representative has provided the opinion that perhaps mediators should be covered if that's the case. That leads us once again to this temptation that I was talking about.

1120

The Vice-Chair: Thank you. Government.

Mr. Zimmer: Let me pose this as an observation. You, as a number of other organizations, have generally left us with the following thoughts:

"(1) We see the need for paralegal regulation in various circumstances.

"(2) We say"—and each of the groups gives us a set of reasons—"that it ought not to apply to us," and have, on the face of it, very compelling reasons. And we've heard from other organizations—my colleagues will correct me if I'm wrong—for instance some of the title insurance companies, where they've actually received correspondence from the law society saying, "Look, if this legislation becomes law, it's not our intention to include you in the paralegal regulation."

Mr. McMeekin: The Building Trades Workers' Services Association; WSIB, same.

Mr. Zimmer: Yes. My point is that a number of organizations that have expressed the same concerns you have also say, "Notwithstanding that we get correspondence or a formal stated intention from the law society that it's not the intention to define your group in the definition of 'legal services,' we're reluctant to rely on that."

The law society is made up of—especially the benchers and the group that will be doing this regulation, which is a separate committee from the benchers—five paralegals, five lawyers, three laypersons, and the chair will be a paralegal. I'm concerned why organizations such as yours and some of the others seem so reluctant to accept the law society's clear statement on this issue.

Mr. Donais: If you actually look at how that committee is going to be structured, and take a good, hard, honest look at it, you will see that the law society, and nobody else, holds all the cards. They will make the decision.

I have to be careful of what I say here. I'm a member of the law society, and a proud member of the law society. I think they're fundamentally a good organization, but I have to temper that with the fact that I'm one of perhaps 300 or 400 members of the law society in a field of thousands and thousands of lawyers who have

no idea about how the collective bargaining relationship works.

The reluctance that you're hearing from these folks comes from the fact that what the act does is that it regulates the decision to the law society, not just to exempt but also to change their mind. They can say now, up front, "These people are going to be exempted," but if somebody like Mr. Kormos here comes up with a scenario where, for example, mediators might be in a position where they should be regulated, and somebody starts thinking about that and says, "Yes, maybe they should be," and going back to the law society and getting them to change their mind about mediators, they can do the same about collective bargaining representatives. And they're doing it in a vacuum, because they don't have, necessarily, a clear understanding about the very delicate balance that is represented in a collective bargaining setting and about the need to deal with rights on a collective basis.

The Access to Justice Act enshrines to a certain extent the primacy of individual rights, and it does so by requiring people to be held to a certain standard, yet to be defined, about how those rights are going to be prosecuted. The collective bargaining relationship deals with collective rights and with a balance of many different competing interests. Our concern, which is probably not special or anything, is that the law society as a group will not have a complete grasp of the nature of the relationship, and for all the other reasons that we talked about concerning temptations to regulate and so on, they may change their mind.

Mr. Zimmer: But presumably the committee would be charged with looking after the paralegals. So that's the five paralegals, the five lawyers, the three public reps and the chair, who is a paralegal. You know, before they decided to include a group in a definition—they're all persons of good faith and solid credentials. Presumably they would do their homework by looking into the facts and taking the best possible advice and, after all of that due consideration, take a decision to exclude or include and then communicate that to the group, perhaps your group, not to include you. I have some difficulty understanding why you wouldn't accept that considered statement then and take that at face value, "No, we do not want to include your group," after they've fully considered the best possible advice and all of that stuff.

Mr. Donais: Sure. Perhaps there are two answers to that. The first one is that it's our understanding that it won't be that committee making that decision. What the committee will be doing is, they will be regulating afterwards. They will be in charge of dealing with the consequences of the decision to exempt or not to exempt. Now if we're wrong about that, then we're back to the same concerns. Who is the law society accountable to? We know whom the government is accountable to, and we recognize the government as the competent body to regulate paralegals. We're not quite so sure about this other group. The law society is lawyers; they are not paralegals. I understand that they would include some

paralegals—some have said token paralegals—in their decisions.

Mr. Zimmer: But would you agree—

The Vice-Chair: Mr. Zimmer, I have to move on.

Mr. Zimmer: Oh. Can I just put one observation on the record?

The Vice-Chair: With Ms. Elliott's permission.

Mr. Zimmer: Thirty seconds. Sorry. Would you agree, though, that the responsibility of the law society is to regulate lawyers in the public interest? It's the Ontario Bar Association, for instance, that's to deal with lawyers in the interests of the lawyers.

Mr. Donais: I think there's a very fine line. There are obviously—that's a tough question for me to answer.

Mr. Zimmer: I didn't mean to open it up.

The Vice-Chair: Ms. Elliott of the official opposition also has an opportunity to ask a question and make comments. So I think we'll go to her at this point.

Mrs. Elliott: Thank you. I have just a few brief comments, Chair.

First, I'd like to thank you for your comments. Your presentation, along with those of other groups that find themselves in a similar situation, wondering whether they will or will not be caught with this legislation, is really very helpful, to me anyway, in terms of looking at the whole issue and the problem, as Mr. Kormos has indicated, in painting with a really broad brush and then exempting. I would agree that the better way, in my view, to approach it would be to define more precisely what it is that you're talking about and to precisely define what "paralegal" means so that you stay on target and work with that definition. Otherwise, you do run the risk of keeping some groups in that shouldn't be in and not regulating groups that perhaps should be regulated. So thank you very much for your contribution to that. It was very helpful.

1130

Mr. Donais: If I could just add, on that point, our proposal is actually to have a very restrictive or a very clear definition of paralegals. Our fallback position is that if you're going to end up with this much broader definition, we would like to see a carve-out for union and management actors. Our first priority would be to have a definition of paralegals that actually covered what you meant it to cover in the first place.

The Vice-Chair: Thank you very much. Certainly, your presentation has led to a very fulsome discussion here.

Mr. Donais: Thank you.

McKECHNIE AND ASSOCIATES

The Vice-Chair: If I could have McKechnie and Associates come forward please. Good morning.

Mr. Greg McKechnie: Good morning.

The Vice-Chair: You have 30 minutes to make your presentation. If you use up the entire 30 minutes, there will be no opportunity for questions or comments from members of the standing committee. If you could intro-

duce yourself for the record and then start your presentation.

Mr. McKechnie: My name is Gregory Frederick McKechnie. I'm the president and chief executive officer of McKechnie and Associates, located at 110 West Beaver Creek, Unit 6. I'm also currently a student at Seneca College in the court and tribunal agent program.

In reference to the timing, I should probably only take about five to 10 minutes. I have only a few short questions but I would like, before I start, to thank everybody for this opportunity. I think it's a truly great sign that we live in a democratic society when individuals who are going to be affected have the right to come forth and speak and make inquiries on these matters. I would like to thank everybody sincerely.

As I have mentioned, I am a Seneca student. I incorporated McKechnie and Associates on April 12, 2005, and shortly afterwards got wind of the Access to Justice Act. I knew that it was something coming along in advance.

The question I have, and it's a question that's very well recognized by quite a few of my colleagues at school and at work, is, what college programs are going to be recognized? There is a real fear among the young paralegal community, people who are getting the legal assistant diploma, getting the court and tribunal agent program and the court and tribunal administration program, that everybody is going to occupy two years of their time and spend quite a bit of money and then turn around and have to go back to school. Has there been any further thought put into that, whether the legal assistant program will be recognized?

Mr. Zimmer: Perhaps I can help here. We do have a list of five questions that you wanted to pose today. Perhaps you could put those questions on the record and I can undertake to have someone from the AG's office meet and provide answers directly to them.

Mr. Kormos: These questions are important to all of us.

Mr. Zimmer: Yes, yes.

Mr. McKechnie: Yes. That was my first question: Will the court and tribunal agent be recognized as valid education? I understand that Linda Pasternak and Wanda Forsythe will be meeting with you next week. I'd imagine you're all familiar with them. They've been most helpful. I was very lucky; I left Seneca on good terms a few years ago. I was able to get rushed back into the program. But there still is really a fear, and even Wanda and Linda have said, "We cannot guarantee 100% that this diploma will be recognized as one that's valid."

The Vice-Chair: Just proceed along, Mr. McKechnie.

Mr. Zimmer: If you want to lay out the five questions, I'll see what we can do to get answers—and my colleagues.

Mr. McKechnie: Okay. Will there be a grace period for those individuals who are practising in the profession who have had to go back to school? I know I'm not alone in this journey. I've started a company, I have a mortgage, I have quite a few responsibilities and it's already been very tough to go back to school full-time. As a

student, I've had to accelerate through summer courses and pretty much work the equivalent of what would be 75 hours a week. It would be a real tragedy and heartache if I myself and many other people, including two individuals in McKechnie and Associates, were not able to be licensed when the bill receives royal assent.

Also, will there be a grace period for the paralegals awaiting pardons? This is another real issue that's come up at Seneca. Nobody had this fear in the past. However, everybody's rushing to get pardons and it's taking 18 to 24 months. Will there be a grace period for that time for people to receive that?

Also, another question that I asked of the Attorney General's office many times but have not been given an answer to is, approximately how long after the bill is given royal assent will it be fully put in place? Will we have to retain insurance to take the test in good faith?

Also, I asked this before: Will the legal assistant diploma from community colleges be recognized to meet the educational requirements?

Those are all the questions I have today.

The Vice-Chair: Thank you, Mr. McKechnie. I will give panel members an opportunity to ask further questions of you or make comments, starting with the government.

Mr. Zimmer: I'll undertake to see what kind of answers we can provide and share those with my colleagues. With respect to your first question—will Seneca College meet the educational requirements?—I don't have an answer for that right now. I'll get an answer for you. I can tell you that I'm the MPP for Willowdale. Seneca College is in Willowdale. It's the largest community college in Ontario, Canada and North America. I do whatever I can to advance the interests of Seneca College.

The Vice-Chair: The official opposition.

Mrs. Elliott: I'd just like to thank you, Mr. McKechnie, for raising the questions you have. They're important, and we need to have answers to them. And thank you, Mr. Zimmer, for undertaking to seek the answers for us.

The Vice-Chair: The third party.

Mr. Kormos: Thank you, Mr. McKechnie. These are important and legitimate questions. I suppose one of the problems is that, if the bill passes in its current form, it's the law society that's going to determine what the educational requirements are. That's part of the problem for some of us, because although we don't expect in a legislative structure to deal with the minutiae—we understand the role of, let's say, regulation—it's pretty difficult for some of us when we're dealing with the bill when we know so little, because there's so little in the bill about, for instance, the educational requirements. There's nothing in the bill about grandparenting in terms of accommodating people who have been practising as paralegals, some very capably, for a good chunk of time. And that includes people who are practising as paralegals who may be halfway through an educational program, right?

Mr. McKechnie: Yes. I was, essentially, when I got wind of this, forced back in. I rushed to Seneca. I was very lucky I was in good standing with my teachers. I graduated in 2002, and they were most accommodating. If that had not been the case, when this bill passes, I don't know where myself or two of my employees would be at this time. I think that's one issue. I think there's really been a lot looked at for the ethical codes and everything and a lot of the other information, but speaking on behalf of the young paralegalling community, that's a real valid fear, because it seems to be the one thing that's been overlooked. To us, it seems like the most fundamental building block for any professional, let alone one like this great paralegal profession that we practise in.

Mr. Kormos: I'm a little bit familiar with the Seneca program. I'm more familiar with the legal assistant program, because that's a program at Niagara College, down where I come from, one of the province's great community colleges, which is also the first school that ever let me graduate. That's true. So I'm eternally grateful to them. It took community college before I got to graduate from anything.

So I'm familiar with the legal assistant diploma, which, as somebody like a few others here who have practised law and had people work in our offices, I consider an entirely appropriate educational background; or doing paralegal work, again, depending upon the type of work you're doing, where you're doing it, who you're doing it for or with.

These are the problems. The criminal record, though—jeez, are there a whole lot of people with criminal records taking the course? Are we talking about old pot charges from when people were kids or are we talking about laundering money for organized crime, notwithstanding that it's a sting, in that you're a former distinguished member of the community?

Mr. McKechnie: When I say that, I don't mean at school. This really came to my attention the other day. We had our first class of third semester, and after the teacher said that, a lot of people went up to speak to Linda Pasternak about that. But there is a concern amongst even some of the more established paralegals, somebody 30, 40, 50 years of age who is practising. That is a fear they have. Once again, that really goes back to the fact that a lot of people feel that there is—I wouldn't say rights being overlooked but certain things that have been really overlooked with the paralegals. There are some things that are very cut and dried.

The law society will be the governing body. I myself think that's a great idea. I don't think there's a better body to govern paralegals than the law society. That's probably the one thing you will never hear myself or any of my associates at McKechnie and Associates complain about. But just looking at what the education really looks like or looking at the whole body—and we've had myself and quite a few other people at my office combing through it, because they obviously have valid fears as well—although it's extremely well put together, it looks

like the younger paralegal group has once again just been left out and other people who have certain concerns have been really put aside.

Mr. Kormos: You know, Mr. Zimmer, Mr. McKechnie makes an incredibly valid point. The law society members, the lawyer side of the new law society structure, are going to be elected by region. The statute doesn't tell us, the bill doesn't tell us, how the two paralegal members—they're not called paralegal in the bill—are going to be chosen. The law society is going to decide that by bylaw.

Presuming that the bill passes—and I hope it passes in a much-improved form, and it's a newly regulated profession—I think education for the paralegal profession is in its infancy. Not that schools haven't had legal assistant programs and other types of programs, but the newly standardized programs will be in their infancy. Why hasn't the government given some consideration to ensuring that there is "either" or "and/or" student representation and young paralegal representation? You see, Mr. McKechnie, who is a young paralegal—I presume that's what you're doing at McKechnie and Associates—

Mr. McKechnie: Yes, a young entrepreneurial paralegal.

Mr. Kormos: —newly incorporated, is a different type of entity than POINTTS, which I understand will be here. I have a huge regard for POINTTS. It's long-standing. It grew from a one-person operation into a major, very effective paralegal system. Why isn't there specific consideration for young paralegals and student paralegals? Somebody could say that the argument could be made with respect to law students. However, law schools are not in their infancy and the programs in law schools are decades old. Look at you and me. They're decades and decades and decades old. Is that not worthy of some consideration, some opportunities, some avenue for input from young paralegals, newly established paralegals and from students in these programs?

I appreciate that. What I hope you would do, Mr. McKechnie, is write to the Attorney General—copy Mr. Zimmer—proposing that, if you agree.

Mr. McKechnie: I will do so. I've written the Attorney General several times to no avail. I will in the future.

Mr. Kormos: No, no, he doesn't open his mail. He has an entourage. Mr. Zimmer has one too. It's not quite as big as the Attorney General's. Honestly, I think your appearance here is very valid and very valuable and I'm confident that if you make reference in the opening line of your letter to the fact that you attended at the committee on such-and-such date, Mr. Zimmer will read your letter for sure.

Mr. McKechnie: Thank you for your input.

The Vice-Chair: Thank you very much, Mr. McKechnie. We certainly appreciate your bringing yet another perspective to the standing committee.

We will now recess until 1 p.m.

The committee recessed from 1143 to 1303.

The Vice-Chair: I'm going to call this session to order. We are here for the afternoon.

IDEALOGIC SEARCHHOUSE (1996) INC.
NATIONAL PUBLIC RECORDS RESEARCH
ASSOCIATION INC.

The Vice-Chair: Our first presenter is Jim Sturdy of the Idealogic Searchhouse—

Mr. James Sturdy: Search house.

The Vice-Chair: Oh, of course. The extra "H" is missing; right? Please seat yourself there. You have 30 minutes for your presentation. If you do not use up the entire 30 minutes, then there is opportunity for the members of the committee to ask questions or make comments about your presentation. Before you start, if you would please identify yourself for the record and then we will proceed with your presentation.

Mr. Sturdy: Good afternoon. My name is Jim Sturdy. I am presenting on behalf of two organizations. I'm the past president of the National Public Records Research Association and I'm the president of my company, Idealogic Searchhouse (1996) Inc. I'm presenting on behalf of these two organizations. Idealogic Searchhouse is a member of the National Public Records Research Association. I'll refer to that as NPRRA. The reason that I'm here in respect of NPRRA is to express our concern over particular sections of Bill 14. In particular—I think you have my handout—it's outlined in schedule C, subsection 2(10), "Provision of legal services." If you drift down through that part of it, you'll come to the section where it outlines what legal service is.

Our members in the NPRRA and my company do a tremendous amount of this work. We form entities, we file documents, we create registrations, many of these things, and we've been doing these in excess of 30 years. Our concern is that we're now looking like we're coming under the purview of another organization to regulate us. To put it in a nutshell, we do quite well on our own. We really don't feel that somebody needs to regulate us.

This brings up an interesting point in terms of this because our members, the majority of NPRRA members, are in the United States. We have five members in Ontario, one in Manitoba, one in the United Kingdom and about 145 to 150 in the United States. This act highlights a problem from the fact that if one of our members in Ontario affects the work that is outlined in (6) under subsection 2(10) in the provision of legal services, a member doing it in Ontario comes under the regulation of this regulatory body, but a member doing exactly the same work in Sacramento, California, wouldn't.

As an example, you can imagine doing a registration under the Personal Property Security Act. Ontario maintains a website, you dial into that website and you can effect that registration. You can effect that registration from anywhere in the world. But if our members effect that registration in Ontario, they come into this act providing legal services and have additional hoops to

jump through. But if they effect the same registration over the Internet from Sacramento, California, they don't appear to. So there seems to be a problem in this legislation in that area because it seems to hamstring or cause additional grief for Ontario members.

Having said that, the NPRRA's policy in the United States has always been, "We don't want to tell government how to run their business. The government does quite well running its own business." We're more than happy to communicate, talk to, share views, work with, and we would be more than happy to work with you in any way we can so that it doesn't impede our members.

If I could switch to Idealogic Searchouse (1996) Inc.—that's my company. I'm president of it. I started one of its predecessors in 1980. We register and file documents. We do a lot of the scope of what's in subclauses vi and vii of subsection 2(10). We create documents. We filed those documents. We register those documents. I believe, when you look at that definition, that I am affecting somebody's right in a personal or real property.

I have difficulty with this legislation because we've been doing this for 20 years. We seem to have done it quite well. We haven't been sued. We carry insurance. We work for banks, lawyers and US financial institutions and we haven't messed up yet. I'm not sure I understand, as a businessman, why I need this regulation. In terms of my company, what it will mean for me is that if this legislation goes through in the way it's written, it's going to move at least three of my jobs out of Ontario. I'm not going to stop doing what I do. I just need to move beyond the reach of Ontario. The work we do with Ontario, where we register companies via the Internet, incorporate companies via the Internet and register PPSAs, we'll just do offshore. So we'll be moving jobs out of Ontario, likely into the state of Nevada, and doing the same work there. That's essentially the meat of my position.

The second, smaller point is that I'm the CEO of my company. We're small. My payroll is probably slightly under \$250,000 a year. Half of what we do we export to the United States. We do these services, and there are times when you go to court. You have to sue people in Small Claims Court for collections. You have to appear in front of places to say that our business does this or that. I feel that some of the other parts of vi and vii of that 2(10) prevent me from advocating or representing my company in any other tribunal or body or whatever. I think there has to be a re-examination of that because it's literally saying that the major, sole shareholder of a corporation can't stand in front of a body and advocate on behalf of that corporation.

That is essentially the bulk of my comments, and I'm open to questions.

1310

The Vice-Chair: Thank you very much. First, I apologize for mispronouncing the name of your company.

Mr. Sturdy: It's okay.

The Vice-Chair: We have 20 minutes for questions and comments. I believe that Mrs. Elliott has the lead on this rotation.

Mrs. Elliott: Thank you very much for your comments, Mr. Sturdy. You may or may not know that the issues you've raised have been raised by a number of presenters who have come before this committee with respect to the scope of this legislation and who will be caught by it and who won't be caught by it, and a lot of organizations have presented on that.

But I think a really important perspective that you're bringing to the table is the financial one, from the position of entrepreneurs. That's a consideration that those of us who are in the opposition feel is very important that the Attorney General listen to with respect to this legislation. Certainly we do not want to be driving business out of Ontario; rather, we want to encourage it. So I thank you for bringing those comments forward, and we will certainly be urging some changes along the lines of what you've suggested.

Mr. Sturdy: Thank you.

Mr. Kormos: Thank you, sir. I understand, as everybody does by now, your comments because it's been a source of grief from the get-go, the minute this bill was tabled. The overly broad definition of what constitutes legal services without clarifying it so that—we're talking about regulating paralegals here. We know what paralegals are, and we know what the problem is. Paralegals themselves believe they should be regulated.

Shop stewards in unions and the members of union negotiating teams are not paralegals. There's no need to regulate them. Human resources professionals are not paralegals. There's no need to regulate them. The incredibly hardworking staff at my credit union and bank are not paralegals, notwithstanding that they have me sign promissory notes—trust me, they do—and all sorts of legal documents. We don't have to regulate them. Our plea is with the government to sit down and resolve this now so we can clear the air.

My fear, because the theme is a "trust us" theme—I don't know. That hasn't cut it in my books since the days of Richard Nixon, if not before. There's just no such thing as "Trust us." The world's three greatest lies: "Your cheque is in the mail"; "Your money cheerfully refunded"; and "Hi, I'm from the government. I'm here to help you."

In terms of the bill and the whole regime having legitimacy out there with the public and with paralegals, people have to have confidence not only in the process but in the content. I hear you, and I just hope that we can get some of the smart people who work in the ministry—and they are very capable—to sit down and work on doing some drafting and taking a look at those amendments.

I've really got to get a better handle on what you do. You do corporate searches? Give us a for example.

Mr. Sturdy: For an example, your credit union lends me money to buy a car. They will register under the Personal Property Security Act their chattel mortgage on

the vehicle. They would phone us, and we would do that registration. They would just say, "Okay, it's Jim Sturdy, he lives here, and it's this vehicle, this serial number. Register it, send us back the verification statement, and we're done."

Mr. Kormos: And if I'm a lawyer doing a transaction of chattels, for instance, and I want to find out whether there is a lien, I'd have you do that work for me too?

Mr. Sturdy: You could call us to do it, you could do it yourself, or you could use any number of other people. And we do that.

Mr. Kormos: See, this is the whole—it's not very much of a secret, but the people who do the heavy lifting in most law offices are the support staff, the paralegals, the law clerks, whether it's real estate deals, whether it's transactions involving the sale of chattels, a whole lot of that type of solicitors' work especially, and even in terms of barristers' work. These are people who are working directly for lawyers. Surely they don't warrant regulation, because it's the lawyer who is picking up the responsibility at the end of the day in any event; right?

Mr. Sturdy: On that side, you're reflecting, I think, rule of procedures 501(c) or something: If you're doing it under a lawyer, then the liability walks with the lawyer. A lot of what I do—I'm outside of that world. Bank of America has retained one of my customers in New York to get a PPSA registered in Ontario.

Mr. Kormos: But if Bank of America does something inappropriately, relying upon that, they're the ones who end up paying. They can go looking to you after, but they're the ones who end up—

Mr. Sturdy: They're going to pay out first, and they're going to come after me and say, "You made a mistake," and we come to terms.

Mr. Kormos: Interesting stuff. Thank you kindly. I appreciate your coming here.

Mr. Balkissoon: I just want to thank you for taking the time to come here. Certainly your concerns and input are valid, and we will take due consideration. Thanks very much.

Mr. Sturdy: You're welcome.

The Vice-Chair: Thank you very much for taking the time to be here today.

Mr. Sturdy: It's my pleasure and my honour.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175

The Vice-Chair: Could the United Food and Commercial Workers, Local 175, please come forward.

Mr. Kormos: Chair, while this presenter is being seated perhaps I can speak, through you, to legislative research.

The Vice-Chair: Yes.

Mr. Kormos: Mr. Fenson has very promptly provided us with a number of documents related to the federal regulation of immigration consultants. Page 5 of that report to us, which is the explanatory note that accompanied the

federal regulation, says, "The proposed regulations"—the one that's here—"allow CIC and IRB to deal only with members in good standing of CSIC or of a provincial and territorial law society." I think what we have to know then is—in terms of what spokespeople not on the part of CSIC but on the part of immigration consultants told us yesterday—does this mean that once paralegals are regulated, if in fact they're regulated by the law society, they then, by virtue of that, will acquire status before the immigration review board, for instance, without being members of CSIC? It's an interesting thing, isn't it? Thank you.

The Vice-Chair: We'll get further clarification on that.

Mr. Kormos: I appreciate it.

The Vice-Chair: Georgina Watts?

Ms. Georgina Watts: Good afternoon.

The Vice-Chair: Good afternoon. You have 30 minutes for your presentation. You can use the entire 30 minutes for your own presentation or whatever remains of that time can be an opportunity for members of the standing committee to ask questions or make comment about your presentation. If you would introduce yourself for the record and then just proceed with your brief.

Ms. Watts: Thank you, Madam Chair. I don't think I'll need the full half-hour. I have relatively brief submissions to make.

My name is Georgina Watts. I'm senior legal counsel to the United Food and Commercial Workers International Union, Locals 175 and 633. Our particular local union is very large for a local union. We have approximately 50,000 members, and they are working in virtually every type of workplace all across Ontario. We have offices in Ottawa, Kitchener, Thunder Bay and Toronto, and all spots in between.

We employ somewhere around 50 people in the capacity of a union representative, and those people do various tasks. Some are service representatives who go to workplaces and provide assistance to the members in their workplaces, processing grievances primarily. They would process those grievances through discussions with employers through the various stages of the grievance procedure. If a resolution isn't reached, those matters are referred to arbitration, and union representatives would attend those arbitrations. At our particular local, it is legal counsel who present and conduct those hearings, but the union representatives are in attendance and in fact giving instruction to the counsel. You don't have to be a lawyer to appear at a labour arbitration; in fact, I think the system was devised so that it wouldn't become too legalistic. Somewhere a lawyer got involved and since then, for the last 20 or 30 years anyway, it has been almost exclusively the realm of legal counsel. That's one type of union rep.

There are also reps whom we employ who do primarily WSIB work, where they would represent our members through the various stages and appeals of that process. We also have representatives who work exclusively in occupational health and safety matters:

seeking orders, appealing orders, appealing failings to make orders and that sort of matter. That's generally the type of union reps we have at our organization. At smaller locals and unions, those roles may not be so distinct. One union rep might do all of those tasks, for example.

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I have been asked on behalf of our organization to make a brief presentation to your committee today. I certainly don't have any authority to speak on behalf of the labour movement, but I think I raise a concern on behalf of all unions that there is a fear that this bill will serve to hamper the union movement and cause expense for the union movement and time and effort that we feel is better spent on the membership and on pursuing the membership's goals.

The act as it is now drafted does not specifically exclude union representatives. The rather broad definition of a paralegal as someone who provides legal services, if you will, could certainly include a union representative. We certainly deal, and our union representatives certainly deal, with the legal rights of members. They often enter into binding settlements and legal documents and affect the economic and social lives of our members. So our concern is that at present the act is written to leave those—whatever exclusions might result, that would be defined by the law society. The law society, in essence, would create a list of the people who would not be covered by that rather broad definition. I understand that the law society's position at this point is that union representatives should be excluded, and we are certainly in agreement with that. What my union would ask your committee to do is to amend the bill to specifically exclude union representatives from the provisions of the act; not to leave it up to the Law Society of Upper Canada to put that group on a list excluding it, but to specifically articulate in the provisions of the act that union reps are not to be considered paralegals for the purposes of this act.

I would like to give you at this point a few reasons why we think that's very important. I'm not suggesting to you that there hasn't ever been a substandard union representative or someone who has not given good service to a member. What I would suggest to you is that we have an excellent system in place right now to help members who are aggrieved or who feel that they haven't received proper representation by their union.

Under the provisions of the Labour Relations Act in Ontario—we do have some members in our union, for example, who are federally regulated or regulated under the provisions of other acts, but the vast majority of employees in Ontario are regulated under the provisions of the Ontario Labour Relations Act. Under that act, and it's true that under every labour relations code in the country, there is a provision that deals with duty of fair representation. In our particular act, the Ontario act, that's section 74. An aggrieved member can file an application under section 74 by simply filling out a form and sending that form to the Labour Relations Board, and

they simply have to articulate why they think their union didn't represent them or how their union didn't represent them. I know from vast experience in dealing with the labour board that the labour board bends over backwards to get to the root of the issue. Sometimes members have language barriers. Sometimes members can't articulate their complaint in a clear fashion. So what the labour board does is assign an officer to those complaints, a very experienced labour relations officer in most instances, and that labour relations officer meets with the parties and helps the aggrieved member articulate their concern and helps to seek some redress. Many of those applications are resolved at that point in the procedure. If they're not resolved at that point, the matter is referred to the Ontario Labour Relations Board, in front of a vice-chair.

The labour board has developed a particular procedure for dealing with these matters, because these people are not usually represented by counsel. Again, the labour board bends over backwards to ensure that those people have a fair opportunity to have their beef heard by the labour board and to come up with some agreed-upon resolution that can resolve it. If they can't resolve it, they'll issue an order. Now, sometimes that order is, "The union didn't violate their duty. Thank you very much." But sometimes that order directs the union to do certain things or to not do certain things in order to try and address the issue.

Let me give you a very common example. An aggrieved person's grievance reaches stage 3 of the grievance procedure and the union decides not to send it to hearing, not to send it to arbitration, for whatever reason. It could be cost, it could be, "I don't think there's much merit to the grievance," "I don't believe the griever," whatever the situation might be.

Under our particular constitution and bylaws of our local, we have an appeal process. If I don't like the decision that the director made, I can appeal to a group of my peers. A committee is struck and you get to go in front of that committee and say, "Well, I think I should be able to go to hearing." Often the committee agrees with you and off it goes to hearing.

If it doesn't go to hearing, often that aggrieved person will apply under section 74 to the Ontario Labour Relations Board. In some circumstances—obviously not ever involving my union; I'm joking—the labour board will say, "You know what? You're right. That matter should have gone to arbitration." This is where the labour board has the expertise and, more importantly, the jurisdiction to fashion remedies that can actually solve the problem. For example, if the labour board determines that that matter should have gone to hearing—"You're a 30-year employee. You paid dues for 30 years. You've been accused of theft. I think you've got a good case"—as the vice-chair of the labour board—and they do this. They will make the union take that matter to arbitration. Even if the time limits for referral under the collective agreement or the Labour Relations Act have expired, the labour board can and does say, "I'm going to override

those time limits. I don't care what the act says and I don't care what your collective agreement says." The labour board is going to say, "I want that thing sent to hearing." They might also say, for example, "I'm going to have the union pay for outside counsel of the grievor's choice."

All sorts of different remedies can be fashioned, remedies that are far outside the realm of expertise or jurisdiction that the law society could ever have in these matters. All the law society is going to be able to do is sanction someone, or require training, like they do with lawyers. When a lawyer doesn't live up to the standard, they can make them take a course, they can disbar them, they can punish them or they can sanction them. But the labour board can fashion and does fashion remedies that actually fix the problem.

With all due respect, two years after, if my complaint about my paralegal or my union rep or whoever it might be were to wind its way through the law society and that union rep would then be sanctioned, that leaves me, the aggrieved member, with nothing. I don't care whether that union representative got a slap on the wrist or a fine. The point is, my grievance went nowhere and I have no meaningful remedy. But if I go down to the labour board 21 days from the day I sent that application—I shouldn't say that; it's not guaranteed. The practice of the labour board is that very soon after sending my application in, I have a Labour Relations Board meeting with an experienced labour relations officer who helps me work through my problem. If that doesn't do the trick, I get to go in front of a vice-chair—again, a very experienced person with knowledge of labour relations. If that doesn't work, I get a decision and perhaps a remedy that's actually going to solve my problem. That section 74 has for many years been the standard to which union representatives have to aspire, and they have to meet that standard. The labour board has developed a large amount of jurisprudence in the area and a great deal of expertise and knowledge and the ability to balance all the different interests.

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Labour relations is a very specialized field, and, frankly, the law society does not have the expertise nor the power of jurisdiction to balance all the interests at play. For every one of those aggrieved employees who goes down to the labour board, there is an employer whose rights may also be affected, who becomes a party to that application. Let's say that we went to a paralegal-like system, where the aggrieved employee would then complain to the law society. In those circumstances, where is the employer left? I'm not going around defending employers' rights—they're pretty good at doing that themselves—but the reality is that the labour board has the expertise to balance all of those interests and fashion a remedy that makes sense, that can actually address the problem and fix the problem for the aggrieved employee. The reality is that the vast majority of those complaints are settled, and they're settled by the parties sitting down across from each other with an

expert mediator, a labour relations officer, who works through the problem, and usually there's some solution that can be worked out. That's the nature of labour relations. It's a lot better to settle labour relations problems than it is to litigate them.

We have ongoing relationships that need to be maintained, unlike, perhaps, a paralegal who represents a person in an immigration matter. That would be the end of their relationship. I have an ongoing relationship with my members. Once they file a section 74 complaint, they're still my member and I still owe them the same duty of fair representation that I owe all the membership.

The labour board has been doing this in Ontario and at the federal level for 50, 60 years. They have developed a large body of jurisprudence, a stable of expert vice-chairs and labour relations officers. I would suggest to you that there isn't an administrative tribunal in the country that has the expertise, the body of jurisprudence or the history that that administrative tribunal has. There isn't a better group of people to resolve labour relations issues than that group of people. With all due respect to my brothers and sisters at the Law Society of Upper Canada, they do not have that expertise and frankly don't know anything much about resolving labour relations problems. In our union's respectful submission, those issues should be left to the labour board. We would look to you to specifically exclude the union representatives and their role. When you read the draft act that your committee is working on and crafting, it's clear that the harm that the act tries to address is not the harm of, let's say, a poor union rep, a union representative who is providing poor service. That is not what that act is aimed at, in our respectful submission.

One other concern I'd raise with you is duplicity of hearings. Section 74 isn't going anywhere. The Labour Relations Act isn't going to change, I wouldn't imagine. It hasn't changed very much in many, many years. There will still be section 74 complaints. At the same time, are we going to be running parallel complaints against union reps? There is a duty of fair representation built into the Labour Relations Act which has resulted in the development of this professional, if you will, called a union rep, and it's a rather unique job and you can't go to school for it. You have to come down at our office to learn how to do it. In our respectful submission, that union rep has to meet a standard that provides a great deal of protection to union members.

There is also a certain amount of competition between the unions in terms of going after membership, and we sell ourselves on the basis of, "Hey, we've got a whole legal staff, and we've got WSIB people who are really skilled and do really well." That competition also raises the bar in terms of our level of representation. But if, for example, someone at some other union were to fall below that standard, we feel that section 74 and the parallel provisions under the other labour relations acts that we deal with provide excellent protection to members, and the labour board has the expertise and jurisdiction to really fix a problem when it arises.

That's all we had to say in terms of our formal submission, but we'd be happy to take any questions.

The Vice-Chair: Thank you very much. We have 12 minutes, and I believe the third party has the lead in this rotation.

Mr. Kormos: Thank you kindly.

Ms. Watts: Thank you, brother.

Mr. Kormos: You might be interested to know that the Society of Energy Professionals was here this morning with very similar observations and comments, not inappropriately, about the bill. I know there are others coming forward from the house of labour.

Over a long time, I've had a whole lot of experience with trade union advocates. In the old days, some of them didn't have high school diplomas and sometimes maybe their English was a little fractured and their diction was not always the Queen's English, but they could kick the snot out of any labour rep in front of an arbitration and knew labour law up and down. I tell you, I'd have put my job or future in their hands any day of the week. Well, it's true. I'm sorry, friends.

In any event, it's a strange bill. It basically says everybody practises law, because there almost isn't anybody in the world who doesn't do something in the list of things that constitute legal services. We made reference this morning to the jailhouse lawyers. There's somebody in a Tim Hortons right now, somewhere in Ontario, counselling somebody, rightly or wrongly, about their rights vis à vis a matrimonial dispute, vis à vis a Highway Traffic Act charge, a criminal charge or a property dispute with their neighbour—mark my words—and that person is practising law. So everybody in the world is practising law; that's hyperbolic, but what the heck.

But then you've got to go to this subsection (5), the exemption: "A person who is not a licensee may practise law ... if and to the extent permitted by the bylaws." That seems to me, from a legal drafting point of view, to be an incredibly cumbersome thing to do. You see, the problem is—because, look, the folks down at the law society, I know some of them a little bit and they're pretty decent people; I have regard for them—I don't think even the law society has got it figured out yet.

I want to take you back, and I mentioned it earlier today, to when this committee first began sitting—April 26. Mediators—you know, folks who help people resolve disputes, like family disputes, without using litigation—are concerned that they'll be deemed to be practising law and they'll have to be regulated by the law society if they help people draft minutes of settlement.

Ms. Watts: Labour relations officers at the board, under the Employment Standards Act—

Mr. Kormos: Exactly. So I put to the law society and their spokespeople, "What about mediators drafting minutes of settlement?" What was the response? Hansard, April 26: "If you have a mediator who's not a lawyer regulated by the law society and not regulated by any other body"—and I interject, mediators aren't—"who's serving as a mediator preparing documents, such

as minutes of settlement in a dispute resolution process to which two lay people are privy, perhaps the answer to the question is, they should be regulated ... they should be recognized by a body such as the law society, so the public is adequately protected."

Now, I found that troubling.

Ms. Watts: I can't make any submissions on behalf of anybody other than union reps, because that's all I know and that's all—

Mr. Kormos: But the only time I had an opportunity was on this one, on mediators. I would have put union reps to him if I had had a chance.

Ms. Watts: But if I was asking that question of them, the point from the law society person was that maybe they should be regulated. I guess my point to you is, we already are and have been for many, many, many years. Whether or not a mediator or an immigration person or someone else should or should not be regulated is a matter for MPPs to decide and the legislature to vote on, but whether or not union reps should be regulated, I guess my point is they are and they always have been.

Mr. Kormos: The problem is, we're not going to get to vote on any of it, because the bill doesn't indicate who is and isn't going to be a paralegal. The bill doesn't indicate what the scope of practice is. The bill doesn't indicate what the standards are. That's the problem. We don't get to vote on anything here.

Ms. Watts: Yeah, and I certainly share your concern with respect to the limited question of union representatives, because the bill as written now leaves it in the hands of the law society to decide, and frankly, I don't think the law society has the expertise to say whether or not union reps need some further level of regulation.

Mr. Kormos: Thank you kindly. I'll not belabour the point with you. I appreciate your coming here today.

Ms. Watts: Thank you very much.

Mr. McMeekin: Yes, sister, thanks for coming out and sharing with us today. I found much of what you said consistent with what some of our other presenters have shared. A number of union leaders involved in injured workers' claims, WSIB, very focused, limited but a highly competent level of expertise. So we hear what you are saying. I think there's a general sense of concurrence here, and we'll certainly be looking at this when we get to stages of clarifying language, potential amendments etc.

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Ms. Watts: Thank you very much.

The Vice-Chair: Ms. Elliott?

Mrs. Elliott: Ms. Watts, the issues that you raised, obviously from the comments that you've heard from all of us, are comments that we've heard from other presenters and are certainly quite valid. We recognize the point you're making, that you are already regulated and don't need further regulation. So certainly we will be taking those comments forward. They are of significance, and we will be considering them very carefully. Thank you very much for being here today.

Ms. Watts: Thank you, Mrs. Elliott. I guess I should clarify what our concern is. Our concern is that somehow there would be some test or standard for union reps and we would then have to spend money on training and spend time sending them off to pass tests. We have union reps, as Mr. Kormos pointed out, who may not be the most articulate people in the world but do a very, very fine job, do a great job. It may be that they don't do so well in the classroom setting of law school or paralegal school, but they do a terrific job on the picket line or across the negotiating table. So I think maybe we weren't exactly who you were aiming at when you put this draft together, and I hope you can see your way clear to specifically exclude our folks from it.

The Vice-Chair: Thank you, Ms. Watts, for coming in.

Ms. Watts: Thank you very much. Take care.

STEPHEN PERRY

The Vice-Chair: If Stephen Perry of Perry Partners could come forward, please. Welcome, Mr. Perry. I think you've been here for a while, so you know that you have 30 minutes and that if you don't use the entire 30 minutes, that's an opportunity for members of the committee to ask you questions or make comments about your presentation. So, for the record, would you identify yourself and then proceed with your presentation.

Mr. Stephen Perry: Thank you, Chair, and thank you, committee members, for inviting me. My name is Stephen Perry. I am here in a personal capacity as a small business owner in Ontario and as a registered patent agent. I've been in this business for 25 years. I have my own firm which I established just a little over a year ago, and we've grown from four people initially up to eight. I was with one of the larger intellectual property firms downtown before striking out on my own. I am also a member of the Intellectual Property Institute of Canada, which will be presenting separately to you next Wednesday, I believe. But these are my own thoughts.

I suppose I should begin by asking the question, what is a registered patent agent? From 9 to 5—well, usually longer than that—day to day, my job is to draft patent applications and advocate for innovators before the patent offices in Canada and the United States and through foreign counsel in other countries. My firm's two biggest clients are Ontario companies: Mitel Networks in Ottawa, which makes PBX equipment, and Research in Motion in Waterloo. These Ontario innovators, of course, are a driving force behind establishing Ontario as a leading technology sector. We could get into great debates about the relative merits of patents or otherwise in terms of monopoly rights and the like, but I think that can probably be saved for another day. The issue here for me is how Bill 14 would affect my practice as a registered patent agent.

A patent agent can be a lawyer, and I'm not sure of the statistics now—quite possibly our president, Cynthia Rowden, will be able to speak to that next week—but I

suspect it's about 50%. So probably half of the registered patent agents in Canada are lawyers, but one need not be a lawyer. I am not a lawyer. Typically, a patent agent has an advanced degree in science or engineering. In my office I've got a Ph.D. microbiologist, a master's in engineering and a lawyer.

In order to qualify to write the examinations, a patent agent must undergo fairly intensive training under the personal supervision of a registered patent agent and then, having completed that, must pass a series of examinations on patent law and practice that are administered by Industry Canada and set jointly by industry and the Intellectual Property Institute of Canada. The exams are notoriously rigorous. The pass rate I think hovers at about 20%. So this is a profession that people really dedicate themselves to. It's not something you just pick up; it's something you really have to dedicate yourself to. People work for many, many years to qualify and, in fact, some people don't qualify. One of my former partners is a highly respected Intellectual Property lawyer who wrote the exams many times but never passed. Fortunately for him, he's also a very good litigator and has a successful career in patent litigation.

What do we do? We, quite clearly, provide legal services. We draft patent specifications and file them with the patent offices. We draft documents that are ancillary to patent applications, including assignments, licences, powers of attorney. We are regularly asked by our clients to provide opinions on patentability, on validity of patents or infringement and the like.

That brings me to Bill 14. Bill 14 is very long. I think it's in excess of 200 pages and has several schedules. Echoing, I think, the sentiments of many of the presenters before me, my concerns are with schedule C. What is the issue? The issue is stated, certainly by the law society and in the government's introduction of the bill, as protecting the public interest by regulating unlicensed paralegals. As we've already heard today, that word isn't even used in the bill. The word "paralegals" just doesn't come up.

The law society, in one of its notices, indicated that the issue is expanding their public interest regulatory mandate. So what's the problem? It goes too far. Not only will the law society be responsible for regulating paralegals—which was their intention—but they will also be, as we know, responsible for regulating any person who provides "legal services" in Ontario. The legal services, as you all know, are set forth in subsection 2(10), which adds a new subsection to section 1 of the Law Society Act. I'm not going to bore you with this, because I suspect you've heard this many, many times in the last couple of days.

Under the terms of the act, if anyone does provide legal services without an appropriate licence, they could be subject to fines of as much as \$50,000 per offence—that's a lot of money—even if that person who provides legal services does so within the scope of his or her practice in a regulated profession such as mine.

I found it very interesting that one of the subsections that schedule C proposes to add to the Law Society Act is the one that states that the prohibition section “applies to a person, even if the person is acting as agent under the authority of an act of the Legislature or an act of Parliament.” There’s a problem. That language has been found constitutionally inoperative by the Supreme Court of Canada in a decision that was appealed out of BC. In that case, the Supreme Court acknowledged what is very well known, and that is that the provinces do have legislative authority to regulate the practice of law under the Constitution. However, where there is a conflict between federal and provincial statutes and rules or regulations, the federal legislation will prevail according to the paramountcy doctrine, which safeguards control by Parliament over the administrative tribunals it creates.

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Interestingly, or helpfully for me and my colleagues, the Supreme Court did specifically mention patent agents at paragraph 58: “Many federal tribunals allow representation by counsel other than barristers or solicitors,” including patent agents before the patent office. “All of these non-lawyer roles involve some aspect of the traditional practice of law. Representation by non-lawyers is consistent with the purpose of such administrative bodies, which is to facilitate access to and decrease the formality of these bodies as well as to acknowledge the expertise of other classes of people.”

So are registered patent agents regulated, which was the problem posed by the legislation and echoed by the Law Society of Upper Canada? Yes, we are federally regulated by the Commissioner of Patents under the auspices of Industry Canada by section 15 of the Patent Act. As I mentioned before, there are stringent entry requirements that require each candidate to demonstrate a good knowledge of Canadian patent law and practice by passing the qualifying exams. The commissioner does have disciplinary power under section 16 of the Patent Act. So we are regulated now. Will we continue to be regulated? Yes. Industry Canada and our institute have collaborated on a proposed federal registration to create a college for self-regulation of patent agents. All of this stuff is available on the institute website, and I suspect you’ll be hearing more about it next week in any event.

Now here’s a nice little catch: The proposed legislation is based on recommendations that were made in 1999 at the request of the institute by Gavin MacKenzie, who is the current treasurer of the Law Society of Upper Canada. I have to tell you that he’s been awfully quiet these days in response to our institute’s requests for clarification. The draft legislation does include provisions for a code of ethics, discipline and governance, all of the things you would expect in a self-regulating environment.

If registered patent agents are already regulated by the Commissioner of Patents and will continue to be regulated by the college, then why do we need to be further regulated? Well, we don’t.

What is the issue? I asked that question before, “What is the issue?” If you’ll permit me, I’m here in an individual capacity and not speaking on behalf of my institute, so I’m permitted a few histrionics and hyperbole, I hope.

The real issue, I believe, is protectionism. Non-lawyer patent agents are competing with non-patent agent lawyers for the same clients and to provide the same legal services. Personally, I believe there is a fear within some members of the law society that Canada will follow the lead of countries such as the United Kingdom, Germany and Japan, which have opened up the courts to non-lawyer patent agents properly qualified in litigation in order to advocate patent disputes, because it’s a very specialized area of law.

By the way, this is not meant to be an exercise in lawyer-bashing. I’m married to a lawyer. Many of my best friends are lawyers. Indeed, the president of our institute, who will be speaking to you next week, is a lawyer. I understand that many honourable members of this committee are also lawyers. So this is not about lawyer-bashing.

I’ve been trying to get my head around the problem with this definition of “legal services,” and it occurred to me that there may be a useful or helpful analogy if you look at health services. You’ve got all sorts of competent, qualified and regulated people who provide health services in Ontario. You’ve got physicians and surgeons who are regulated by the College of Physicians and Surgeons of Ontario. There are midwives who have a college, optometrists who have a college, naturopathic doctors and so on and so forth. All of these people provide health services. So I fail to understand why there shouldn’t be a similar sort of arrangement in connection with legal services in Ontario. Barristers and solicitors practising law are regulated by the law society; patent agents are regulated by the commissioner; trademark agents also—my friend does patents and trademarks; I personally do trademarks, but the institute will be speaking on behalf of both—real estate brokers; we heard about labour representatives; all sorts of people are regulated, but in the day-to-day provision of their services, they deal to some extent in the traditional practice of law.

So what is the solution? Well, the solution proposed, as we all know, is an exemption under the bylaws. I don’t think that works. For one thing, it gives absolute discretion to the law society as to who they will decide to exempt and who they won’t. There is absolutely no public process. This is the public process, but once it gets into the bylaws, the public is out of it. In any event, it would not cure this constitutional inoperability that the Supreme Court of Canada has already found to exist in connection with similar legislation in BC. So there is a solution that I think you’ve heard many times over, and that is to include a specific exemption within the act.

I’m not sure if you have the handout that I had prepared, but the first option in the handout is—I’m kind of pre-empting my colleagues a little bit here, stealing

their thunder, but this is, I believe, what they will be presenting next week. I'm getting the sense, having heard a little bit today and having looked at the submissions, that there are an awful lot of people who are looking for specific exemptions. I don't really know anything about the legislative drafting process and whether having great, long lists represents any challenges in that respect, but I'm sure the real estate brokers are looking for it. We've heard that union reps would like it, insolvency and restructuring professionals. So it occurred to me that there may be an alternative.

These are the sections of the bill as they read now. The first section is the prohibition, the second section is the exemption and then the third section, the one I drew your attention to, which specifically directs this legislation at "agents." I'm wondering if some very simple amendments could be made by including as exemptions subsection (5), which is the law society bylaw exemption, and subsection (8). But if you take subsection (8) and just turn it on its head, borrow the language that begins subsection (5)—"A person who is not a licensee may practise law or provide legal services in Ontario"—and then continue on, "if the person is acting under the authority of an act of the Legislature or an act of Parliament."

Thank you very much. To the extent that there is time left, I'd be happy to take questions. I hope that this is an opportunity for the committee to ensure that Bill 14 lives up to its name to promote access to justice and not to interfere with access to legal services that are provided by highly qualified, regulated professionals.

I'm also quite happy to answer questions from any budding inventors within the committee. You might as well ask now, because if the bill passes into law in its current state, you won't be able to ask me later, because I'll get sued for up to 50,000 bucks a question. Thank you.

The Vice-Chair: Thank you, Mr. Perry. We have 13 minutes for questions and comments. The government has the lead.

Mr. Shafiq Qaadri (Etobicoke North): First of all, thank you, Mr. Perry, for your expertise in the realm of registered patent agency. As one of my colleagues was remarking, I think we're often treated to a number of inventions at committee hearings. So we thank you for your expertise, particularly with regard to Mitel and Research in Motion.

A couple of questions: You've referred specifically to the training, the exams and some of the hurdles that your agents have to go through. Can you tell us a little bit more about that training? What exactly is the time frame? Is it a year out of law school, for example? What is it?

Mr. Perry: It has evolved over time. When I wrote the exams back in the mid-1980s, a lawyer in Ontario could write the exams at any time, whereas a person without a law degree, such as myself, was required to undergo a two-year apprenticeship under the direct supervision of the patent agent. That has changed. The regulations, as they stand now, require all persons, lawyers and

non-lawyers, to be personally trained under a registered patent agent for a period of at least 12 months.

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The institute has also provided a course that's been quite well received that has some fairly senior members of the profession doing online training and paper setting and evaluation as a lead-up to the examinations, and that has worked quite well. So our institute is motivated to try and do something about the pass rate because it's astonishingly low, but they are very rigorous exams.

Mr. Qaadri: So a 12-month apprenticeship under a registered agent; what does the pre-apprenticeship training involve?

Mr. Perry: That's a very good point. Again, when I wrote, you had to either be a lawyer or an engineer or have a degree in sciences, but that has all been abolished. So there has been a willingness to open the gates a little bit and allow people with other specialties to be able to train and write. But as a practical matter, it's very difficult to service the needs of high-technology clients without a fairly substantial technology background.

Mr. Qaadri: Having a look briefly through your proposals, option 1 and option 2, I presume you can see the difficulty of instituting option 1 yourself with regard to—

Mr. Perry: It occurred to me it might be a problem.

Mr. Qaadri:—specific exemptions?

Mr. Perry: Yes. I figured I wasn't the only one who would be making that recommendation. So, yes, I see it's a problem.

Mr. Qaadri: With regard to option 2, the very last paragraph, do you not see how that essentially undoes the entire intent of Bill 14 by essentially opening up the practice of law or legal matters to everyone in the province?

Mr. Perry: I don't think it does if there are acts of Legislature or acts of Parliament that permit representation before specific tribunals other than the courts in a way that recognizes the special expertise of certain people and reduces the formality of court proceedings and the like. As I said before, I chose that wording to be consistent with what I believe the decision was under the Supreme Court.

Mr. Qaadri: All right. Once again on behalf of the government side, I'd like to thank you for your presence and your expert testimony.

Mr. Perry: You're welcome.

The Vice-Chair: Ms. Elliott.

Mrs. Elliott: Mr. Perry, you're clearly aware that the issues you've raised have been raised by a number of other organizations, but I for one certainly appreciate your perspective, particularly with respect to the constitutionality issue and the problems inherent in re-regulating a federally regulated body. So thank you very much for that, and I appreciate it.

Mr. Perry: You're welcome.

Mr. Kormos: Thank you, Mr. Perry. You're referring to subsection 26.1(8) as it will be in the act if the bill passes. I have no idea what that means: "This section applies to a person, even if the person is acting as agent under the authority of an act of the Legislature or an act

of Parliament.” I have no idea. “Agent” isn’t defined that I can find in schedule C.

Mr. Perry: It’s a very interesting choice of words because the issue before the Supreme Court—I didn’t give you all the background—was an immigration agent or consultant. I’m not overly prone to conspiracy theories but—

Mr. Kormos: Oh, what the hell.

Mr. Perry: What the heck.

Mr. Kormos: I spent the 1960s living them.

Mr. Perry: But I have to wonder whether that language was chosen—it’s very specific language.

Mr. Kormos: Do you remember the 1960s, Mr. McMeekin?

Mr. McMeekin: I do.

Mr. Kormos: I don’t. Go ahead, Mr. Perry.

Interjection.

Mr. Kormos: The problem is, the immigration consultants were here yesterday and a fellow spoke to them the very first day of the hearings, a dissident immigration consultant, and then the whole issue came up that if they’re federally regulated, does that then deprive the province of the jurisdiction to similarly regulate them through the law society? Research is working on that as we speak, but interestingly in the CSIC, in the immigration consultant, the regulation federally says that you can appear before the Immigration Review Board if you are a member of CSIC or if you are a member of a law society of a province.

It’s interesting, and that’s what I’ve asked research to take a look at for us. Does that mean that a paralegal who is regulated by the law society would then automatically become entitled to appear before IRB—which I’m not saying is a bad thing?

Mr. Perry: Quite possibly.

Mr. Kormos: The federal regulation in the immigration case opens the door, or includes, provincial regulatory bodies in the screening bodies. Your scenario doesn’t appear to have that same situation. There’s nothing suggesting that in the Patent Act. It says licensed patent agent or somebody who is an a, b or c. Yours is a little bit of a different scenario, and it then calls out for—and I’m asking Ms. Drent to take on yet more work, as she can give us a little bit of insight into that.

What’s remarkable about this bill is that if you take a look again at “Provision of legal services,” appearing before an adjudicative body, representing a person before an adjudicative body: I appreciate that there are federally constituted adjudicative bodies and there are provincially constituted adjudicative bodies, but it also includes arbitrations, private arbitrations. What the hell is the province doing, telling parties to a private arbitration whom they can and can’t have appearing with them or for them? It’s none of our business. It’s what private arbitrations are all about: the parties to the arbitration. You can have monkeys acting for you at an arbitration—well, there are probably some parties to arbitrations who thought they did. You can have monkeys acting for you if you want.

It’s between the parties. I find the “best-laid plans of mice and men” once again—I understand the intent. So do you. Let’s focus on the paralegals. Let’s focus on the problem. Let’s focus on the myriad of professionals about whom there’s no public concern.

I ask Ms. Drent as well to get us some sense of how many complaints have been made about human resources personnel, mediators and all of those other professionals who would be caught by this net. Throw patent agents in there too. Let’s see whether the Ministry of the Attorney General has been inundated with complaints about patent agents.

Mr. Perry: No, it would be the Commissioner of Patents, and he has exercised that authority. It was even last year that he took action against a rogue patent agent. There are very, very few instances of that but we are regulated. There is discipline in place.

Mr. Kormos: The lawyers have got you beat to all get-out, then. There’ll be far more investigations. I appreciate your comments. This is very different. The problem is that if the government doesn’t let us, we’re not going to have an opportunity to have people from the Ministry of the Attorney General come back to this committee to respond to these concerns. We’re going to be asked, 102 voting MPPs, to vote on this bill with all of these concerns having been raised without an opportunity, unless the government lets us, here in committee, have the Ministry of the Attorney General come back here and answer some of these concerns.

I don’t think that’s a healthy way to pass laws. I don’t think so at all. I’m hopeful that we’re going to let the law society come back here. They opened the hearings, not inappropriately.

I have no doubt in saying that I am sure Mr. MacKenzie will be more than pleased to respond to any and all issues raised, but I want to hear what he’s got to say before we take this into the House for third reading and are told to vote on it. That’s irresponsible. There’s not a member in this Assembly who should be willing to even touch this bill until it’s been thoroughly investigated, analyzed, criticized, critiqued, and that criticisms have been met, either with explanation or with proper amendments.

What are any of us doing, either in opposition or in government, for that matter, at the point when somebody from the government is going to move to send this bill back to the House? What are any of us doing, doing that, unless and until we’ve gone through it with the proverbial fine-toothed comb? It’s going to have huge impact.

And don’t think they’re going to come back and tinker with it a year or two years from now. It ain’t gonna happen. It doesn’t happen that way.

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The Vice-Chair: Thank you, Mr. Perry, for your very interesting presentation.

JUDI SIMMS

The Vice-Chair: We are now about 20 minutes ahead of schedule, so our next presenter hasn't arrived yet, but we do have another presenter who is available. I'm going to ask Judi Simms to come forward, please. Welcome, Ms. Simms. I just want to inform you that you have 30 minutes for your presentation—oh, just a moment; it should be 20 minutes. I'm sorry. If you don't use the entire 20 minutes, then there is opportunity for members of the committee to ask questions or make comments about it. So if you could please identify yourself for the record and then just start your presentation.

Ms. Judi Simms: Good afternoon. My name is Judi Simms. The gentleman before me spoke so eloquently that I feel I'm going to risk being redundant; however, I'm here to say my bit and I'm going to do that.

Before I do that, there's a question that I wanted to ask you. The gentleman here stated that there aren't many complaints—actually, Mr. Kormos stated that most of these people who have spoken here today, most of these agencies, haven't had any complaints, or there is no record of complaints against them from the law society. What I want to ask you is, how many actual complaints are there about paralegals in front of the law society? That's the question that I would like the answer to, because I would venture to say that if this question is investigated, it would probably be found that there aren't all that many complaints registered with the law society against paralegals.

Having put that question forth, I'd like to get into the body of my speech. I have introduced myself. I have a long speech written out there. Hopefully it won't put anybody to sleep. I know it's getting late in the day.

I'll restate my name. My name is Judi Simms. I am a paralegal, immigration consultant and qualified mediator. I have been in this industry since 1995, at which time I completed a certificate program with Ontario Paralegal. I hold three university degrees: an honours B.A. in English and history, a master's degree in English, and a bachelor of education degree. I have also completed and have obtained two certificates in mediation from the University of Windsor law school, and I am a full member of CSIC, the Canadian Society of Immigration Consultants, having successfully met all their requirements for full membership. I have been a full member of the Paralegal Society of Canada since 1995 and have carried errors and omissions insurance since it became available to paralegals in 1997.

Today I come to you in my capacity as the president of the Paralegal Society of Canada and an executive director of the joint boards of the Paralegal Society of Ontario, the Paralegal Society of Canada and the Association of Legal Document Agents. The Paralegal Society of Canada, which I will refer to as the PSC, is registered as a federal corporation, with the Paralegal Society of Ontario, which I will refer to as the PSO, as its provincial counterpart. These organizations function as a unified body and represent the interests of paralegals in

Ontario seeking self-regulation and also offer consumer protection to the public at large. For the purposes of this discussion, however, I will refer only to those activities carried forth by the PSO, as this would be the organization that would be responsible for paralegal regulation in Ontario.

Let me be clear: Paralegals are committed to some form of professional regulation. Our opposition to this bill is not to avoid regulation, but to avoid the wrong type of regulation. The journey towards regulation for paralegals has been very difficult, but much has been accomplished, and I would like to share with you now the steps that have been taken towards self-regulation by paralegals in the past decade.

The PSO was formed to protect the interests of paralegals as a unified body as well as to protect the interests of consumers who use the services of paralegals. To this end, several steps have been taken to ensure that the organization is able to fulfill its mandate.

In 1997, the society began to require as a criterion for membership that every practitioner belonging to the society carry errors and omissions insurance. Every member among our ranks is today insured by the Encon Group Inc. Many paralegals have separate bank accounts which function as trust accounts, and some of us are bonded.

We have in place a code of conduct and a committee for investigation of complaints, and consumers are able to access us via our hotline and website. We have a complaint review and adjudication panel as well as modes of enforcement in place. These measures have been taken in order to ensure ethical business practices from our practitioners and to inspire public confidence.

We offer educational courses to our members consisting of twice-yearly seminars on relevant and timely legal topics, demonstrating our commitment to high standards of competency, education and professional development. Our efforts complement the many community colleges and even universities that offer certificates or bachelor of arts programs in paralegal studies.

We have prepared a white paper on licensing and self-governance outlining our plan for affordable self-regulation for our industry. Please remember, the Ianni report in 1990, the Cory report in 2000, and the report commissioned by paralegal organizations in 2004 by Professor Zemans have each concluded that paralegals should not be regulated by the law society.

So why is it that there are paralegals here at these hearings who will talk to you about the advantages of regulation by the law society? I believe it is simply battle fatigue. We have fought for so long for recognition and the right to practise that some of us are willing to settle for regulation by the law society in order to have some measure of stability in our business lives. We live from day to day with the threat of prosecution hanging over our heads for performing services that the public has demonstrated for the last 30 years that it wants and desperately needs. We are all tired of this uncertainty, and because a minority among us could survive and earn a living under the law society regulation as proposed by

Bill 14, some have decided to give up and have accepted the lesser of two evils: the certainty of bad regulation versus the uncertainty of the status quo.

The problem with Bill 14 is that it does not serve the public well and it does not ensure affordable and comprehensive access to justice.

Paralegals are essential to affordable access to justice in Ontario. Some of us are fully employed in meeting the needs of low-income people in such areas as family law, landlord and tenant tribunals, workmen's compensation claims and Small Claims Court, as well as other tribunals. Today, in the interests of time, I will address the situation in Ontario as it relates to family law.

One respected Family Court judge has noted that in 80% of family law cases, litigants appear without legal representation. A PSO-commissioned study, of which you have already heard, has shown that 46% of those in Family Court—nearly one in two persons—have no legal representation. Many of these are women and children, low-income families and new Canadians. Even though paralegals have been instrumental in assisting women and children in many family law cases, Bill 14 appears designed to further impede the ability of paralegals to practise and provide much-needed services in this sector of the law that touches so many Ontarians.

Despite the epidemic of non-representation in our family courts, there has been a move by family courts to exclude paralegals from practising in family law. This makes very little sense. If paralegals remain barred from practising in the area of their expertise, a large segment of the public, many of whom are women and children of low-income families and ethnic Canadians, will continue to be deprived of any form of representation in the family courts.

There are many paralegals within our organization who have dealt exclusively in family law, with 10 to 15 years or more of training and experience in the field. Properly trained paralegals answerable to their own regulatory body should not be barred from practising in the family courts. Training requirements should be determined by the regulating body and not arbitrarily by the courts, as has been the case in recent practice.

Most paralegal firms are small businesses comprised of one or two practitioners. Because the practice is small, the practitioners are more accessible to the public and the public at large feels more comfortable dealing with a paralegal. In many cases, paralegals working within an ethnic community speak the language of the people in that community. As such, they provide a comfortable environment and affordable services to community members seeking assistance in legal matters.

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Paralegals meet a vital public need that lawyers to date have failed to address. A lawyer is unable to provide many of the services that low-income and ethnic Ontarians require at anything close to an affordable rate; without a paralegal in the picture, the access to justice for low-income and ethnic Ontarians is denied.

Should the law society become the regulator of paralegals, all legal fees will have to increase. The position of the law society is that paralegals will be assessed a high annual licensing fee to pay the cost of regulation. This will drive many paralegals out of business as they will not be able to afford the exorbitant fees the law society intends to levy. The fair way to pay the cost of regulation is to pass the cost on to the consumer, either by a surcharge on all files, or a tariff as a percentage taxed onto each fee account. In this way, the consumer, who reaps the benefit of paralegal regulation, pays the cost. The PSO recommendation of a tariff rather than an annual licensing fee is preferable, for although this will also increase the cost of paralegal fees it will minimize the displacement of many paralegals.

We are all familiar with the saying, "There's always room for someone good." Paralegals who have been in the trade for a number of years know their business well or they would not be able to survive. If the public had no need of paralegals, then we would not be here. The fact that we are here shows that we are needed and, in fact, have found a niche within the legal community. We have done this by ourselves, without the assistance of lawyers or the law society. Should the law society become the regulator of paralegals, many of the services we offer will be curtailed.

Only a few days before he appeared before this committee last April, law society treasurer Gavin MacKenzie told the *Toronto Star* about his plans to curtail the activities of paralegals. I note that Mr. MacKenzie did not tell you about these plans when he appeared before you on April 26, 2006. You may wish to invite Mr. MacKenzie back to explain the disparity. The curtailments that Mr. MacKenzie plans, if he's given a mandate under this legislation to regulate paralegals, are not supported by any sound reasoning but instead by economic considerations in support of sole practitioner lawyers. Moreover, such curtailments serve to reinforce an impression the law society likes to promote: that paralegals are less skilled in providing basic legal services than are lawyers.

This brings me to an important point: There are many government sites which offer legal forms online, so that any person, regardless of education, training, experience, can access and complete legal documents. Some lawyers author self-help manuals for divorces, wills, powers of attorney. If the public at large is deemed capable of filling these forms out, does it not make sense that a paralegal, knowledgeable and skilled in the completion of legal documents, should be able to assist them? Low-cost paralegal assistance in the completion of legal documents helps those who are poorly educated and/or not fluent in the English language access the legal system. Low-cost paralegal assistance in completion of legal documents saves our court staff time and money by ensuring that forms are completed and filed quickly and accurately.

There are very serious issues with the broad scope of definition of legal practice in Bill 14, as well as within

the designation of the law society as the regulator of all legal practice. Bill 14's definition of "legal services" is so broad that it seems that virtually every person engaged in business management consulting in Ontario is engaged in the provision of legal services. This is evidenced by the long list of speakers who are appearing before this committee, including insurance companies, medical associations, banks, car lease and real estate companies, to name a few. Does the government intend that the law society be the regulator of all business consulting professions? This would indeed be a coup for the law society and one that I think they are not well equipped to handle. The plan may be that many business consulting professions will receive an exemption from this legislation, though many will not. At the end of the day, Bill 14 will only apply to the independent paralegal, who the law society believes, rightly or wrongly, is in competition with its lawyer members. The potential for a bureaucratic monopoly will always exist if this legislation passes in its present form. Exemptions given now may just as easily be withdrawn at a later date.

Another problem with Bill 14 is the huge conflict of interest that arises when one part of an industry is allowed to regulate its competition. A paralegal is not a lawyer and provides different services in the same field, although those services sometimes do overlap, resulting in competition between lawyers and paralegals. Often, for its own reasons, the public chooses a paralegal rather than a lawyer.

There is competition in every industry. Why should the legal field be any different? In Canada, in most sectors of trade and commerce, competition is regarded as a good thing. I'm hard pressed to think of one other area of professional practice where one profession regulates its competitor. Doctors do not regulate midwives, naturopaths, nurse practitioners or paramedics. The very concept of one profession regulating another in competitive practice ensures that the goals and objectives of the dominant profession will prevail, to the detriment of the general public.

In Great Britain and Australia, countries which also base their legal systems on the British common law, there's a move to deregulate legal service providers and give status to different kinds of advocates and advocacies in the interest of allowing their public greater access to justice. Great Britain and Australia are moving forward; Ontario proposes that we take a step back.

In the past 10 years, the paralegal organizations have worked tirelessly toward self-regulation but, for whatever reason, there have always been impediments to these proceedings, most of which have been brought forth by the law society. There have been three reports, as previously mentioned: two commissioned by the government and one by paralegals, each of which recommended loud and clear that paralegals should be self-regulated in order to allow for fair competition in the legal services marketplace. Despite their thorough examinations of the legal services marketplace, the government has chosen to ignore the recommendations of these reports.

In his Task Force on Paralegals report, 1990, Professor R. W. Ianni stated: "The regulatory model chosen for independent paralegals should be the least intrusive necessary, consistent with the public's need for greater access to legal services, as well as for some protection against possible abuses in the delivery of those services."

In his report, *A Framework for Regulating Paralegal Practice in Ontario*, which was released May 31, 2000, the Cory report, the Honourable Mr. Justice Cory stated: "I would emphasize that it is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the province of Ontario. The degree of antipathy displayed by members of legal organizations towards the work of paralegals is such that the law society should not be in a position to direct the affairs of the paralegals."

Further, a submission prepared for Professor Ianni's task force in 1989 by Ian R. Nielsen-Jones, deputy director of investigation and research services for the federal Competition Bureau, states: "It will be my conclusion that the market forces, having demonstrated a need and a public benefit to be gained from independent legal services, should be allowed to govern the provision of these legal services to the extent possible, consistent with the requirement of competence and integrity inherent in the provision of professional services. I would urge the task force as an objective and unbiased adviser to the government, to carefully consider expanding the scope of practice presently available by law to paralegals with the intention of introducing more competition to legal services for the benefit of the public."

Every single report commissioned to study paralegal regulation has concluded that while paralegals should be regulated, the regulator should not be the law society.

The PSO is ready and able to be the regulator of paralegals in the public interest. The mechanisms for successful regulation by our body have long been in place. As a society, we have worked many long hours on a volunteer basis to prepare for the day when we can become a self-regulated industry.

Prior to the proposed introduction of Bill 14, we looked forward to a long and successful future in our chosen careers, yet it now appears that these long, hard hours of work could be for naught if this bill is enacted in its present form.

We therefore ask that in consideration of our position and in light of the arguments we have put forth today, you review and amend Bill 14 to allow for self-regulation on behalf of paralegals. It is only through self-regulation that paralegals can continue to provide a valuable service to the Ontario public. The interests of low-income and ethnic Ontarians are at stake.

Thank you for considering the interests of low-income and ethnic Ontarians.

The Vice-Chair: Thank you very much, Ms. Simms. Unfortunately, the time has expired. I do want to thank you very much on behalf of the committee for your presentation and for being available to make it at this point in time.

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USED CAR DEALERS ASSOCIATION OF ONTARIO

The Vice-Chair: I would now ask that the Used Car Dealers Association of Ontario representative come forward please. Good afternoon.

Mr. Warren Barnard: Good afternoon, members of the committee. I wish to thank you for the opportunity to speak. My name is Warren Barnard. I am the legal services director of the Used Car Dealers Association of Ontario. My submission will be brief, and our concerns as you'll hear are really centred around very specific sections of the proposed Bill 14.

Before I get into that, if I may, just briefly, I want to give you a short outline of who we are as an association, who the UCDA, the Used Car Dealers Association, is. Our association represents about 4,300 registered motor vehicle dealers throughout Ontario, both large and small, franchise dealers and independent dealers, in large cities, small towns and rural areas. Our members employ close to 20,000 registered sales people, in addition to other employees that they would employ as well.

The UCDA will be celebrating in a couple of months, in November, its 22nd anniversary. We're a federally incorporated, not-for-profit association and we are the voice of the used vehicle industry in Ontario. Our mission is to enhance the image of the industry through representation of our members, education, as well as mediation between consumers and dealers.

The UCDA endeavours to carry out this mission by working with all levels of government, particularly at the provincial level, the Ontario Ministry of Government Services, as well as the ministry-appointed regulator that regulates our industry, which is the Ontario Motor Vehicle Industry Council, or OMVIC for short. We also work closely with other motor vehicle industry associations, as well as with consumer groups throughout the province.

We offer educational seminars and material to our members through our member services department, and we have helped thousands of dealers and their employees to better understand their legal obligations and legal rights and the remedies of all parties when selling or leasing vehicles to consumers. Through mediation and practical advice, our legal services department, comprised of two full-time lawyers, including myself, helps to avoid or resolve hundreds of consumer concerns and disputes with dealers per year without the need for any further legal action.

Now, if I may, I'd like to get into our concerns about Bill 14. I want to start off by stating that we do support the broad goals and aims of the bill to bring into the fold the regulation of legal services in Ontario. Our concern is really centred around the definition of what a legal service provider is and how that may potentially affect our members and their employees.

Schedule C to Bill 14 proposes amendments to the Law Society Act which include a licensing and regulatory regime for anyone who provides "legal services." The UCDA, as I mentioned, is fully supportive of this initiative to ensure that legal service providers in Ontario comply with prescribed standards in the public interest.

Section 2(10) of schedule C proposes that a new subsection be added to the Law Society Act. That subsection would be subsection 1(5), and it would establish in a very general and broad sense the type of activity that would require licensing and be subject to regulation under the act. The proposed section states, "For the purposes of this act, a person provides legal services if that person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person." That's a very broad description. On its own, I believe that the description would likely be restricted to apply reasonably to someone who is indeed providing specific advice of a legal nature to a client or to an individual.

Our concerns really stem from what follows that subsection, and that's the proposed new subsection 1(6) to the Law Society Act, which more specifically describes and breaks down the activities that would be regulated under the bill. That proposed subsection states:

"(6) Without limiting the generality of subsection (5)—which I just read—"a person provides legal services if the person does any of the following," and part of that "any of the following" is:

"2. Selects, drafts, completes or revises,

"i. a document that affects a person's interests in or rights to or in real or personal property."

That's subparagraph 1(6)2i. That's a very broad clause and we believe a plain reading of this proposed subsection could reasonably lead to the conclusion that an individual engaged in many common and routine business and commercial activities would be subject to regulation as providing a legal service. These individuals, we fear, could easily include the 23,000 registered motor vehicle salespeople in Ontario who work for the almost 9,000 dealers who are registered across the province.

Every day these individuals draft, complete and revise, to use the words in the subsection, documents that relate to the purchase, sale or lease of motor vehicles. Once entered into, clearly these transactions are affecting a person's legal interests or rights to or in personal property. There's no doubt that they are. If you buy a car or you lease a car, it's done through documentation. Obviously the whole purpose of that document, that contract, is to revolve around someone's legal rights or title to the vehicle.

But should this be considered providing legal services for the purpose of the act? Does it really require oversight by the Law Society of Upper Canada or, for that matter, any other legally governing organization? We think the answer should clearly be no. Frankly, we doubt if the desire of the law society is to do so. However, the impact of this subsection, as I mentioned, creates some fear within our industry and frankly could

extend well beyond the motor vehicle industry to any purchase, sale or lease transaction of virtually anything, any type of tangible property: furniture, computer equipment, televisions, appliances or real property as well. All are sold, leased or financed by way of documentary agreements, what we all would term a contract—certainly a legal document.

Proposed subparagraph 1(6)2vi also raises concerns. It goes even further than the previous subsection. Legal services are said to be provided by a person who “selects, drafts, completes or revises a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v,” and I previously mentioned “i.”

This subsection would seem to encompass virtually any other documents or a documentary transaction that wasn't captured by the previous subsections. It can be said to affect the legal interests, rights or responsibilities of any person, again which would bring it into the purview of the draft legislation.

We're hard-pressed to think of any commercial activity or commercial document that doesn't affect someone's legal interests in some way. Even a credit card receipt at a cashier at the grocery store or at Wal-Mart can be said to do that. It could very reasonably be argued that every store clerk or salesperson would be considered for the purposes of this bill to be a legal services provider as Bill 14 currently defines it.

Motor vehicle dealers and salespeople, in addition to preparing documentation for the sale and lease of vehicles, also prepare documents relating to those transactions, such as assisting in the financing of a vehicle's purchase or the purchase of an extended warranty or credit insurance for a consumer, to name just a few. We're concerned that proposed subparagraph 1(6)2vi would seem to suggest that this also makes anyone signing or preparing that document a legal service provider.

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As I mentioned earlier, we agree fully that the regulation of non-lawyers who provide legal services or legal advice to clients for consideration—a fee or some other consideration—certainly need to be regulated in some way. We think that's long overdue. But we're not of the view that motor vehicle dealers or salespeople who prepare these documents I'm speaking of should be regulated as legal service providers. We're confident it was not the intention of the drafters of Bill 14 to include them within its scope. We very much doubt as well that the Law Society of Upper Canada has any desire to license and regulate such activities either.

Further, motor vehicle dealers and salespeople are already registered with and regulated and licensed by the aforementioned OMVIC, the Ontario Motor Vehicle Industry Council, which since 1997 has been delegated by the Ministry of Government Services to administer the Motor Vehicle Dealers Act. OMVIC's mandate, as the regulator, is to ensure a “fair, safe and informed marketplace” by enhancing consumer confidence and protection

when dealing with a motor vehicle dealer. OMVIC is empowered to enforce the provisions of the Motor Vehicle Dealers Act and other consumer protection legislation that relates to the sale of motor vehicles. It currently administers an internal self-discipline process to ensure that dealers abide by an established code of ethics and standards of business practice. That discipline process includes administrative fines and penalties and is currently used by OMVIC where a dealer has violated the code.

Since 2001, OMVIC has also required new registrants, both dealers and salespeople, to pass a certification course, which includes instruction on how to complete documents, such as bills of sale and lease agreements, and includes basic legal training, if you will, on what a dealer's rights, responsibilities and obligations are, as well as what the consumer's rights are under the Consumer Protection Act and other legislation. So quite simply, there is no need to further license or regulate dealers and salespeople who are already regulated by OMVIC.

To conclude, we again agree that the intent of the bill is admirable. We support the bill as a whole, but its present wording extends its scope, at least potentially, beyond what is reasonably necessary to accomplish its goals. We therefore would submit that amendments be made to Bill 14, or in regulations thereto, that would make it clear that registered motor vehicle dealers and salespeople engaged in the buying, selling or leasing of motor vehicles or related products and services are not providing legal services and therefore are not required to be licensed as legal service providers; in other words, would not be subject to Bill 14's provisions amending the Law Society Act.

I thank you very much for the opportunity and invite any questions you may have.

The Vice-Chair: Thank you, Mr. Barnard. We now have 17 minutes for questions and comments. The lead is to the official opposition.

Mrs. Elliott: Mr. Barnard, as you will know, we've heard from a number of organizations that have expressed concerns very similar to the ones you're expressing today. In fact, the concerns that you particularly have are very similar to the Canadian Bankers Association, whom we heard from earlier today, because they deal with similar types of documentation in terms of drafting contracts, loan and security agreements and so on.

I would certainly agree with you: I very much doubt that it was the intent to catch organizations such as yours and the bankers association and the work that their members do in this legislation, but we're increasingly seeing that that's part of the problem in throwing the net widely. You catch some of what you want and you catch a lot of what you don't really mean to be regulating in the first place. So we recognize your concerns as being very valid and significant. I guess our task is to look towards how we can regulate the problem that needs to be regulated and leave everybody else alone to do their business. So thank you very much for bringing this before us.

Mr. Barnard: I agree. Thank you.

Mr. Kormos: Thank you, Mr. Barnard. As has been indicated, and you're well aware, your concern is consistent with the concern of a whole lot of other people who are put in a similar position. I don't, at least at this point in time, subscribe to the conspiracy theory that somehow the law society wants to extend its coverage to this broad range. At the same time, it's my view that the exemption process is not the correct way to build legislation, because inevitably somebody is going to be missed, and at the end of the day it's not our job, in my view, to delegate this to the law society. We, as legislators, should be dealing with it here and now.

I know Mr. Zimmer, who is a fair-minded person, who is among the best and the brightest of his caucus, would do and will be doing his best to look at language that can adequately describe—we're targeting paralegals. We know what the problem is. We know what the issue is. It's paralegals and the regulation of them, and that will, quite frankly, enhance the profession of the paralegal. The dispute is still going to remain about whether it's the paralegals who should regulate themselves or whether it's the law society that should regulate paralegals. That's going to remain an issue.

Mr. Barnard: We'll probably stay out of that dispute.

Mr. Kormos: I'll bet you will.

But surely, Mr. Zimmer—and there are a whole lot of smart people you have working for you down on Bay Street there who can look at other statutes, because it seems to me the Legislature has grappled with this issue before. We have no interest—and we've talked about this before. Look, do we want the pastor, the clergyperson who sits down—seriously—with a parishioner and helps them finish a legal document or fill out a legal form or advises them, God forbid, of their legal rights at an interim level to be the target? Of course not. Do we want hard-working constituency staff of MPPs and MPs, who, of course, are very careful not to cross the line, but who deal with very serious emergencies on an hourly basis in constituency offices, yes, and help people fill out forms etc., etc.—and mine will continue to do so unless and until somebody in real authority says they can't, and I appreciate the hard work that they and their colleagues in other members' offices do. Do we want to target them?

People who are to be regulated are people who are in the business of providing a business, of providing legal services, and who, for a fee, do any number of these enumerated things. Isn't it easy enough for the real smart people down on Bay Street—incredibly competent, experienced people; and they are—to sit down and contemplate language that would identify the community of paralegals running business, charging fees for their services out there in Ontario, whom the Legislature wants to bring into a regulatory regime and most of whom want to be in a regulatory regime, with, again, the issue of the law society versus self-regulation. Is it that difficult, or is the law society digging its heels in? I don't know. It seems to me we would solve a whole lot of grief and be far more straightforward, candid—the public has got to

understand what this is all about. If it's going to be a regulatory regime for paralegals, then let's identify who paralegals are and explain how they're going to be regulated.

I don't know. Mr. Zimmer, surely you have the answers and surely you've got the resources at your disposal, at your fingertips, to get the answers that you don't happen to have with you today. We can solve a whole lot of grief, we can solve a whole lot of problems, by simply putting on the table in short order amendments that would address this issue. It seems to me it might not—this is just off the top of my head, okay, Mr. Zimmer? I'm just thinking here, just reflecting, that maybe to talk about the practice of providing legal services—because we talk about the practice of law here when we talk about the lawyers in the bill; the practice of providing legal services, the charging of fees for doing any of the following things. Because you see, a car dealer, a car salesperson, does all these things but they don't charge a fee for it. It's part and parcel of the transaction.

Mr. Barnard: That's correct.

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Mr. Kormos: A clergyperson does it but doesn't charge a fee for it; a human resources person does it but doesn't charge a specific fee for it. Isn't that the key here? Are we capable of legislating free advice, no matter how poor it might be? As we've noted before, it's being given every minute of every day. That's not what we're targeting, is it? I don't know. It just seems to me that we're putting a whole lot of people through a whole lot of grief, when it could be addressed and resolved in a way that I think would make for better legislation, clearer legislation, more responsible legislation.

Mr. Zimmer, you're bright and capable. I'd say you are a leader in your caucus. You are, and I say that with all sincerity. We're relying upon you, as parliamentary assistant, to lead us out of this wilderness.

Thank you, Chair, and thank you very much, Mr. Barnard.

The Vice-Chair: The government side? No one? No questions?

Mr. Zimmer: Thank you very much for your submission. As my colleagues opposite have said, we've heard several presentations that made the same point, so we'll add yours to those that we have to consider carefully when the committee concludes its work at the end of the hearings.

The Vice-Chair: Thank you, Mr. Barnard, for bringing your concerns to the committee.

STEVEN SAGER

The Vice-Chair: I now want to call upon Mr. Sager. I'm not sure if I pronounced your last name properly. I apologize if I haven't.

Mr. Steven Sager: I used to smoke cigars. The name is Sager.

The Vice-Chair: Mr. Sager, you have 20 minutes in which to make your presentation. If you don't use up the entire 20 minutes, then there's opportunity for the members of the standing committee to ask questions or make comments about it. If you would identify yourself for the record and then just proceed.

Mr. Sager: For the record, Madam Chair, my name is Steven Robert Sager. I come to you today as one of the original founding members of the Paralegal Society of Ontario and a past president of the Paralegal Society of Canada. I, like many of today's paralegals, am a university graduate, mine being in criminology and law. Some have sat as judges or worked as lawyers in other countries. Many have become members of the Ontario bar. Others have elected not to do so, like myself, and work what I consider to be the lower courts, where I act as an agent.

The area that I wish to speak of today is a somewhat grey area when we're talking about federal statute being overshadowed or compromised by new provincial legislation. I have appeared in the criminal courts as a defence agent for approximately 16 years, with no problems. There's never been a time that I haven't been granted standing by a judge of the criminal courts at the provincial level. Where I have a fear, and I addressed this fear at the Cory commission to Justice Cory himself, is the number of people who are in the criminal justice system who are not represented, primarily because they do not qualify for legal aid and they can't afford a lawyer. The end result for most of these people is going to be a plea anyway; they're not going to go on to trial. I would say, from what I understand the statistics are, that 80% of everything going through the provincial criminal court system is dealt with by way of pleas. The paralegals that I have dealt with over the years have dealt with clients' needs through pre-trials with crown attorneys and also with judicial pre-trials, where we've had no problems.

Although we say that a federal act shouldn't be overshadowed by provincial legislation, the way I see it at the moment is that it will, in fact, because judges are independent; they run their courtrooms as they see fit. If a piece of provincial legislation comes out barring paralegals from the criminal court, I submit to you that it stands in opposition to the federal statute, where a person is allowed to be represented by an agent.

I just want to make certain that there's going to be, through this committee, a thorough investigation, where the committee is going to look into any conflict between the rights that are guaranteed currently to the citizens of Ontario in the criminal justice system by the Criminal Code to be represented by an agent—which is also guaranteed in the Charter, the right to fair and competent representation.

I have found, through numerous committee meetings, especially the Justice Cory hearings—Justice Cory himself stated in his report that he didn't feel that paralegals should be representing people in the criminal justice system because there were so many rights that could be

violated, and the big fear was people being incarcerated through various criminal charges. I've found, with the paralegals I have dealt with, the cases that I've dealt with over the last 16 years—I'm not saying I'm a good criminal defence advocate, surely, but in the type of summary conviction cases I have dealt with, I have not had one client be sentenced to any custodial term.

So my position is, where I've heard repeatedly in most meetings through different committees, through the Cory representations—we keep saying that paralegals should not be in the criminal justice system. Provincially, this is what we're looking at through this new legislation, whereas I have always been governed by the federal statute, particularly section 800 of the Criminal Code, that says that I may, as an agent, represent a client on summary conviction in the criminal court system.

My primary purpose here today, as it has been in the past, even at the Cory commission, where I put in written presentations with respect to paralegals in the criminal justice system, is to make certain that this committee does a diligent effort in making certain that the provincial legislation in no way tries to overshadow the federal legislation, which currently permits agents to appear as representatives in the provincial criminal courts.

Those are my presentations.

The Vice-Chair: Thank you very much, Mr. Sager. We have 12 minutes for questions and comments, starting with the third party, Mr. Kormos.

Mr. Kormos: Thank you, Mr. Sager. Interesting comment. You see, that's one of the problems with the legislation: The legislation doesn't contain any indication of the scope of practice to be proposed for regulated paralegals.

Mr. Sager: This is what I've seen in my reading of it.

Mr. Kormos: It's convenient—and I'm not suggesting this is the government's motive—for governments to delegate this stuff, because then they can wash their hands of it, right? They don't have to take any of the political fallout from whatever decision that arm's-length body makes, and the Law Society of Upper Canada is very arm's length. They can say, "Don't complain to us."

This whole issue has—it's not the most fractious issue in the province, but the paralegals, some of them, feel that it's inappropriate for the law society to regulate them; to wit, to be members of the law society. Some merely think there's an unfair breakdown of lawyer members versus paralegal members, and others, I'm told, will be advocates for the proposition, just as social service students in community colleges were eager to become part of the BSW/MSW college of social workers. See, this is the problem: Nobody here can answer your question. We have no idea what's being contemplated in terms of the scope of practice.

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Mr. Sager: This is the feeling I got when I read it.

Mr. Kormos: We have no idea whatsoever. I'm not even sure, notwithstanding the references to statements allegedly made by Mr. MacKenzie and statements that I did hear him make here—he's the treasurer, but it's not

up to him, surely, as a single person. So I'm not sure, because I don't know the answer, that the law society has sat down and started doing preliminary work presuming that the bill will pass. That's my trouble with this legislation and, quite frankly, any other legislation that's akin to it, that's similar to it in structure. Those things should be being dealt with in public, transparently and on the record.

I dearly want to hear some expertise. Let's get some of the judges in here. They'd be as good a source as any, wouldn't they—

Mr. Sager: They would.

Mr. Kormos: —in terms of how paralegals have worked in, let's say, provincial courtrooms, because clearly we've got a problem when we get up into the Superior Court. That's a different—

Mr. Sager: If I can comment: Justice Marshall, who's a senior court judge, appeared at the Cory hearings and very strongly supported the position of trained paralegals being in the criminal courts representing people on summary conviction matters. I've appeared before her countless times over the years representing clients, with no problem. My greatest fear, of course, is that for paralegals like myself, who primarily, to this point in time, fall under and are governed by the federal statute—because we're working under a federal statute; we're being permitted to be in the courts by the federal statute—this type of legislation, in its current form, as broad as it appears to be right now, especially when I'm listening to the automotive dealers' association up here giving a talk on how they don't want to be affected by this, is very dangerous legislation, as far as I'm concerned.

Mr. Kormos: The Attorney General wants this passed; he wants this passed so badly he can taste it. He stays up late at night worrying that this bill isn't going to get front and centre on the order paper. He has done everything he can to weave and bob his way with this bill so that it's ready for third reading once the House resumes. I think it would behoove us all to spend—we're here for another year, folks—a few more days with this, at least in committee. I'd like to see the law society here—and not just for 30 minutes but for an extended period of time—to respond to the concerns that have been raised. Let's hear some answers. We've had some serious, legitimate questions; let's hear some answers. The law society and a few of the other people who could shed some light on this, the Ministry of the Attorney General interpreting some of this stuff here, some of which is gobbledygook, quite frankly—it would serve us all well, wouldn't it?

Mr. Sager: I would think so. Let me further add that, as far as competing with lawyers in the services I provide, we're in an area where the lawyers in some regards, especially senior lawyers, senior counsel, to operate their offices, to operate their businesses, need a certain scale that they charge per hour. Paralegals generally are small business operators. Ms. Simms was saying that there are maybe one or two practitioners in that office. We are not dealing with the type of law, the

broad aspects of law, that most lawyers, or all lawyers basically, are dealing with.

The greatest referrals that I get are from lawyers: "I have a client in my office who's in a bit of a jam financially, but he works for the Toronto Transit Commission and owns a house, and as such doesn't qualify for legal aid. Now, if you can represent him, great. Otherwise, he's going to appear in court by himself unrepresented." The problem is, is this correct? Well, no. Fine, I have a law degree, but before I went back to law school, I was a Toronto police officer for a number of years, and I've seen both sides of the street. I know that when we made an arrest sometimes, on certain individuals we used the shotgun approach: "Let's scatter the wall and see what sticks."

Mr. Kormos: And throw in an "obstructing police" for good measure.

Mr. Sager: There you go.

Mr. Kormos: That was always the ace up your sleeve, right?

Mr. Sager: There you go. So we have crown attorneys—and over the 16 years that I've been doing this, I've found most of them to be very good, hard-working, diligent people who are trying to do the best job they can in a system that is so overburdened that you just don't have time to deal with each case and give it the thought and control that it should be given.

The same thing applies to duty counsel. You go down to old city hall's first appearance court: You've got duty counsel down there, and they don't know which way is up. There could be 160 people going through court who need to speak to duty counsel. How in God's name is that individual going to be able to give any just and proper information to a person, even if that person wants to plead guilty? How does the crown attorney deal with—he's got four or five charges in front of him. Fine, they've gone through the process of pre-trials, sometimes no pre-trials; sometimes a person, like I said, is coming in for the very first time and they want to plead guilty right now: "I want to get this over with." What does an overburdened crown attorney do?

Representation somewhere along the line has to be brought in to protect these people's rights. I don't think this legislation, as it reads right now, is going to do that.

Mr. Kormos: Thank you, sir.

The Vice-Chair: Anyone from the government? No. Ms. Elliott, would you like a comment or question?

Mrs. Elliott: No. I'd just like to thank you very much for your presentation.

The Vice-Chair: Thank you, Mr. Sager.

DAVID KOLODY

The Vice-Chair: I'd now like to call upon David Kolody and Deirdre McIsaac.

Mr. David Kolody: Unfortunately, my wife couldn't be here today. She's at home with our children. It's difficult for our family to travel.

The Vice-Chair: I well understand that. If you would like to make your presentation, you have 20 minutes. If you don't use the entire 20 minutes for your presentation, then there is opportunity for the members of committee to ask questions or to comment. At the outside, would you identify yourself for the record, and then go ahead with your presentation.

Mr. Kolody: For the record, my name is David Kolody. I'd like to thank the committee for the opportunity to present here. We just submitted our submission very recently, so it's quite an honour to be invited here.

We are concerned about the legislation in Bill 14 regarding legislating mandatory annuities for medical negligence claims. The wording of one of the criteria for annuities is ambiguous. It will have two negative consequences. First, it places the victim of medical negligence at risk that their future care award would not be indexed to inflation; second, it will increase the litigation costs, it'll lengthen a trial and also decrease the probability of a pre-trial settlement.

We're here today to ask that you change the legislation and update it such that it reflect that the annuities should be indexed to the CPI, or consumer price index.

Over the last 70 years, inflation has varied greatly. There have been over four periods of double-digit inflation. The average rate has been about 4.1%, but as you can see from the graph, it's been all over the map. No one can predict inflation. Certainly, 70 years ago no one could have predicted what this graph would have looked like and how much it varies. No one could have predicted stagflation in the 1970s or early 1980s. And even besides the 1970s and 1980s, there were other periods of high inflation in the 1940s and 1950s. There's always a risk there might be another period of high inflation.

The effect that inflation has on the funds to provide a future care award are quite profound. A future care award might be required for time periods of 70 years or more. There are injured children whose life expectancy has not been affected who will go on to have a normal life expectancy, which is 77 years for males in Ontario and 80 years for females. So if inflation is not adequately provided for, even a small shortcoming will have a huge ramification over these time scales. If we look at the difference between a 2% inflation projection and a 4.1%, at the end of the term, there would be a drastic shortfall in funds.

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There are three methods to provide for the future care of the victim of medical negligence. First, there's a lump sum method, which this legislation will eliminate, or eliminate the victim's rights to get. Lump sum provides for the monthly care costs through its investments. There are annuities indexed to a fixed rate, and there are annuities indexed to changes in the CPI.

The lump sum method provides protection from inflation because it's invested in instruments such as GICs and bonds, and the nominal interest rate of these investments varies with inflation. For example, in 1981,

inflation was 12% and a five-year GIC was 15%. In 1999, inflation was 2% and a five-year GIC was 4%. Inflation may vary greatly, but the rate of return on fixed-income vehicles varies with it. There's no requirement for a future care award with a lump sum for the court to predict inflation for the next 70 years. Indeed, the lump sum method assumes a positive rate of return above inflation. The way that a lump sum is calculated with a discount rate as specified in rule 5309, it uses assumptions as determined by a set of actuaries on the real rate of return, which is the rate of return above inflation. So the lump sum is calculated cognizant of inflation. There's no requirement to predict it.

Annuities indexed to a fixed rate do not provide protection from inflation. Inflation cannot be accurately predicted for the next 70 years. Fixed-rate annuities actually require two things: both that you can accurately predict it. As we showed in the previous graph, if you're short even by as much as 0.5% or 0.1%, you can have a drastic shortfall over the time periods that we are looking at here. So a fixed-rate annuity requires two things, both that you can accurately predict it and that it's constant. As we've seen in the last 70 years of inflation history, inflation has been nothing related to being constant.

What a fixed-rate annuity does is transfer the risk of inflation onto the victim of medical negligence. A shortfall in funds would have to be addressed by the family or have to be assumed by the province if inflation is not adequately addressed.

CPI-indexed annuities do provide protection from inflation. As stated by Dr. Gray here this morning, insurance companies are highly skilled at risk analysis. With fixed CPI-indexed annuities, the insurance company takes on that risk and they index it as per the rate of change in the CPI. It's dynamic. There's no need for a court to predict inflation for 70 years at the time that the future care award is made. The legislation also requires that the annuities be reasonably available, although that clause is subject to some interpretation. CPI-indexed annuities are offered by a number of the major life insurance companies.

If we look at the precedents for CPI indexing, pension benefits for retirees in defined-benefit pension plans are indexed to the CPI. Even the Ontario public service pension plan is indexed to the CPI. All other government funds, such as CPP, are also indexed to the CPI. A victim of medical negligence needs protection from inflation for a very long time frame. For an injured child, that's 70 years or more. That's far greater than, for example, for a retiree, who might need protection from inflation for 20 years or so. As we've seen over those great time spans, if you mis-guess inflation by even the smallest amount, there would be a huge shortfall in funds.

With this legislation, because it is ambiguous in its wording, there are two criteria: both that it provide reasonable protection from inflation, but it doesn't define what that is, and also it says that it should be reasonably available. What this does is it enables the CMPA to argue for fixed-rate annuities. Right now, medical negligence

cases are already very difficult and costly. There are three aspects to a case: There's liability. Was there specific medical negligence committed? There's causation. Did that specific negligence cause the specific injury? And there are damages, which is a calculation of the amount of award to mitigate the damages from the injury.

What this legislation does, because it is ambiguous, is create a whole new battleground for litigation called annuity indexing. The courts will be confronted by many expert witnesses for both the plaintiff's side and the defendant's side to argue about what the inflation rate will be for the time period of the next 70 years. The CMPA will hire six or more and take up a month of court time. A trial that would have lasted eight weeks will be stretched out to 12, all to hear from a whole panel of economists, each with their own opinion on what inflation will be. That's what fixed-rate annuities require.

This additional conflict will make it more difficult to reach a pretrial settlement. It's a whole new source of disagreement between the plaintiff and the defendant. Already, we have three very difficult areas to get through, each with its own set of medical experts. Now we're adding a fourth because of this legislation. The truth is, no one can predict inflation for the next 70 years, certainly not with the accuracy that's required to care for an injured child.

We ask that the committee recommend that the legislation be changed so that it indicates that the annuity should be linked to the CPI. This will ensure that the injured party does not incur the risk of inflation. It will ensure that litigation is not made more difficult and costly. This additional cost in litigation is actually borne by the victim, because the costs awarded by the court today to bring forward a case do not come anywhere near to covering the real true costs. So any more additional litigation required comes out of the bottom line and what's available to the victim of medical negligence.

I'd like to add one more point. In my research in preparing for today—of course, I didn't make it through my slides—I referenced off legislation done from Australia, which is similar to this, and they did reference the CPI in their legislation.

Thank you. I'd like to answer any questions you may have.

The Vice-Chair: We have 12 minutes for questions and comments. The government side has the first lead.

Mr. Zimmer: Can I ask you something about your background? Are you in the insurance industry?

Mr. Kolody: I'm a parent of a severely disabled child who's in the court process right now. We launched our case seven years ago, and we hope to be done next year.

Mr. Zimmer: You have training in insurance? I'm just wondering. You did this impressive research, which I compliment you on.

Mr. Kolody: Thank you. I'm an engineer, and my wife is an economist.

Mr. Zimmer: I see. Thank you very much. I've got your material here, and I can tell you, I have an interest

in the economics of this issue, so I intend to study it carefully. It's very well presented. Thank you.

Mrs. Elliott: Thank you, Mr. Kolody. Let me just say at the outset, I'm very sorry that you're in this position and having to do this research. It must be very difficult for you to come before us to discuss this.

I have two questions, if I may. One is, in your comments about having the annuity indexed to CPI, I take it that you don't particularly have a quarrel with having to accept an annuity instead of a lump sum payment at the outset, because that's what the legislation proposes, but as you know, now, it's not mandatory to accept that. Could you just give us your comments on that, please?

Mr. Kolody: Certainly. We would have preferred a mixture of both. That would be our preference. In our case, I think we would prefer to get the majority structured, but partial also for lump sum. We today, when I made this presentation, just picked our battles per se to ensure that the CPI or the proper protection from inflation is addressed. Previous people before you have presented comments towards the appropriateness of taking away this right to a lump sum.

I do agree with those comments, but I think it has also been mentioned that a great number of cases today that are currently through the legal system are structured. I think that they are also a mixture of both, where the parents obviously do look out for the best interests of their child. Structures have benefits if they're protected from inflation. So in our case, we would actually like to do a mixture of both.

Mrs. Elliott: It certainly seems reasonable to me, especially when you're considering a child who has become disabled as a result of whatever has happened. Because there is such a long period of time under consideration and one can't account for the vagaries of inflation, it would seem to me that it's very sensible advice to have it indexed to the CPI. So thank you very much for that.

Mr. Kolody: Thank you.

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The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, Mr. Kolody. I'm not surprised you demonstrate how people who are embroiled in these prolonged and very tragic litigation processes become experts in their own right in short order.

As we had some discussions this morning, the CMPA was here. I have no quarrel with them arguing for a legislative response to what they perceive is high cost. I understand that.

I was concerned about the word "shall" in the legislation, of course "shall" on motion by either the plaintiff or defendant. In other words, either party can compel the court to order a structured settlement. I suggested that the word "may" might be more appropriate. Again, I don't know whether it's fair to put that to you, because that's pretty simplistic. Are you suggesting that perhaps a more thorough consideration and a specific provision for a blended award is appropriate? By "blended" I mean lump sum plus structure. In other words, just as the CMPA

wants to see the word "shall" in here, would you like see specific language providing for a blended award?

Mr. Kolody: Each case would be different and each plaintiff no doubt would look for the best interest for their child. I don't know if the legislation needs to propose—I think it's best left to the advocates for the severely injured. I believe that the process to do this is not done in a week or a month; we're talking about many years to work through this process. In all of these cases, the people who advocate on behalf of the severely injured will gain that expertise to do the right thing, so the option should be left to them.

But I'm very concerned today that in the current form, a trial that was scheduled for eight weeks will now be 12, and we will need to hire two expert witnesses to rebut their six.

Mr. Kormos: I understand. I think we all understand the problems that creates. "The annuity must include protection from inflation to a degree reasonably available in the market for such annuities." That's pretty weaselly language.

Mr. Kolody: Yes.

Mr. Kormos: "To a degree reasonably available in the market"; it doesn't say, "must include protection from inflation," period. That little trailer there on the end—do you understand what I'm saying, Mr. Zimmer?—is the weaselly stuff. I find that a little scary.

Mr. Kolody: Yes. We know of at least a couple of firms that sell CPI-indexed annuities. Not all do. Does that mean they're not reasonably available? I'm sure the CMPA will put forward that argument.

Mr. Kormos: And "protection from inflation": You are saying that should specifically be defined as meaning a CPI-indexed annuity?

Mr. Kolody: Yes. We don't want an uphill battle to try to get CPI, as opposed to a fixed rate.

Mr. Kormos: Okay. The problem is that this is schedule A of a bill whose focus is paralegals. Many of us, when we first read the bill months ago, went, "Holy moly, what's going on here? This one's stuck in here." It applies only to medical malpractice, interestingly, as well. I found that and thought, "Hmm," and right away some red flags went up, because we know what's going on there. If this was good for everybody, well why didn't it apply to all personal injury actions, huh, Mr. Zimmer? But it appears that the CMPA types had their way with somebody in there.

The problem is that this is going to be lost in the thrust of the bill. I think your presence here today is very important. There's not a single member of the media present, and understandably; it's 4:30 p.m. How are we going to focus some public attention on this, in terms of that community of families of innocent victims, because that's what we're talking about, isn't it? How are we going to focus some attention and ring some alarm bells on this and get people interested? We haven't got a whole lot of time.

Mr. Kolody: We are definitely concerned, and after this we will probably engage the media to try to bring

some focus to this. We believe that future care costs need to be protected from inflation and all Ontarians need to know about this. We hope that the legislation will be amended very soon. I think we will continue on with the fight and take it to however far. We were very concerned about the care costs for our son. This is a responsibility that exceeds our lifetime, and that's a very sobering thing that not too many people have reflected upon. We don't want to be worried for the rest of our lives about what inflation will be the year 2050.

Mr. Kormos: What will inflation be when you're gone, never mind the rest? Okay. The government is fast-tracking the bill, and again, that's just the way it is.

Mr. Kolody: There's no mention in any of the CMPA submissions to the government about indexing. Talking about annuities without talking about the indexing is like talking about a mortgage without talking about the interest rate. It's all about the indexing.

Mr. Kormos: I appreciate that very much. I'd encourage you to write letters to the editors of major Toronto newspapers, for starters. That's how this stuff gets on the Premier's office radar.

The Vice-Chair: Thank you very much, Mr. Kolody. We certainly appreciate your travelling here and bringing your personal perspective to this committee.

Mr. Kolody: Thank you very much.

The Vice-Chair: Our next presenter won't be arriving until 4 o'clock, so we are going to recess for 30 minutes and then we will reconvene at 4 o'clock.

The committee recessed from 1527 to 1550.

INSTITUTE OF AGENTS AT COURT

The Vice-Chair: I call this meeting of the standing committee on justice policy to order. We have one last presenter, the Institute of Agents at Court. You have 30 minutes to present your brief, and out of that 30 minutes, if there's any time left, there's an opportunity for members of the committee to ask you questions or make comment on your presentation. Before you start your presentation, would you please identify yourselves for the record.

Mr. Greg Burd: Good afternoon. For the record, my name is Greg Burd. Sitting to my right is Susan Crisp and sitting to my left is Todd Brown. We're all members of the Institute of Agents at Court. We've provided you with a brief prepared by our task force which outlines the issues with respect to Bill 14, and we'll address those issues with you today. In addition, our task force made a written submission to the committee on April 20, 2004, which details our concerns.

The Institute of Agents at Court is an organization founded in 1987, which represents the interests of paralegal members and paralegals at large in Ontario. The IAC has actively participated in discussions about paralegal regulation since its inception. The IAC supports the concept of paralegal regulation in Ontario and looks forward to implementation of the proposed regulatory scheme by this government, subject to certain amend-

ments and considerations which we will detail today. The IAC eagerly awaits an opportunity to work with the government of Ontario and the ultimate paralegal regulator in the development and ongoing evolution of paralegal regulation in Ontario. I will be addressing an issue, as will Mr. Brown and Mrs. Crisp.

The first issue we would like to address is the addition to the act of provisions for grandparenting. We acknowledge that the act provides that the Law Society of Upper Canada, through the legal services provision committee, will ensure that all persons who provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide. It is suggested that the bylaws, established by the law society for the purposes of the committee in implementing its mandate, will address the grandparenting of individuals into the regulatory regime. It is not the committee that will set out the requirements for grandparenting but rather the law society itself, by virtue of establishing and amending law society bylaws. It is acknowledged that the law society's 2004 task force report includes recommendations on grandparenting.

We, as the IAC, recommend the inclusion in the act of a provision ensuring that an individual who has been providing legal services for three of the last five years prior to the passing of the act will be permitted to sit the licensing exam as established by the law society.

Ms. Susan Crisp: The next area of concern that we would like to address is equivalencies. Individuals involved in areas of the justice sector other than paralegals may choose, after many years in their current professions, to make career changes and commence paralegal work. For example, police officers and justices of the peace with five or more years' experience in provincial offences court may possess the experience and skills necessary to write the paralegal licensing exam. These individuals may also possess related academic qualifications.

As section 102 of the law society report suggests, acceptable equivalency could possibly include certain forms of work experience, as well as educational experience, or some combination of the two. However, the law society report suggests that a person who meets the acceptable equivalency requirements may only qualify for advanced standing in an approved community college program offering paralegal education. Recommendation 6 of the law society report suggests that the community colleges offering such approved programs, subject to law society approval, would conduct the assessment of equivalencies.

We would suggest that it is unreasonable for an experienced and well-seasoned police officer or justice of the peace to be required to complete a one- or two-year community college program in paralegal education. A more considered approach would be for the community colleges offering the approved paralegal programs to conduct a prior learning assessment of these candidates

on an individual basis, subject to the approval of the law society.

There is existing legislation which can be held as an example of appropriately dealing with equivalencies. In this regard, we would refer members of this committee to section 4 of Ontario regulation 867/93 relating to the Midwifery Act, 1991. This information is actually detailed in the report that we've given to you—and I won't review it in detail with you here today—but a review of the section will set out an appropriate suggested approach to dealing with equivalencies for the purposes of this act.

We would recommend the inclusion in this act of provisions ensuring that an individual who possesses acceptable equivalencies be permitted to submit to a prior learning assessment administered by the community colleges offering approved paralegal educational programs or by such other administrator as approved by the Law Society of Upper Canada to determine the individual's qualification to sit the licensing exams as established by the Law Society of Upper Canada.

The other issue of concern that we would raise with you is relating to commissioner-of-oath appointments. Paralegal operations will be more efficient and will be better able to serve their clients if they are appointed commissioners of oath at the time of licensing. Currently, paralegals must arrange for their client to attend at a lawyer, justice of the peace or such other qualified individual solely for completing affidavits or declarations. These are often necessary in the matter for which the paralegal has been retained.

This outsourcing can be inconvenient, potentially an added expense to the client or paralegal and time-consuming. Licensed legal services providers should be appointed commissioners of oaths contemporaneously with the implementation of their licences so that they may properly deal with their clients' matters. Part VI of the 2004 consultation document prepared by the law society in connection with paralegal regulation under the licensing and accreditation section provided that, "Accredited paralegals would become commissioners of oaths within their designated areas."

We would therefore recommend the inclusion in the act of a provision whereby those persons granted licences to provide legal services in Ontario shall be commissioners of oaths within the areas in which they are licensed to provide legal services.

Mr. Todd Brown: Good afternoon, everyone. My name is Todd Brown. I wanted to comment just briefly on the video and audio conferencing provisions that were to be included in the Provincial Offences Act, and further, the status of paralegals as not being officers of the court.

The proposed amendments to the Provincial Offences Act set out in the act include a provision for the taking of evidence by electronic means. The IAC joins other advocacy groups in the view that these provisions will usurp the effective examination of witnesses. What's envisioned is that a police officer could potentially give evidence from a remote location, like a police station or

elsewhere, by a video link into the courtroom. You would have live defence witnesses there being subject to the scrutiny that the crown could put to them under the stress and rigours of being in an actual courtroom, whereas a police officer conceivably would be sitting comfortably in a police station. That's a problem that we have with the bill as it's proposed.

It's our view that the government should not understate the utility of a conventional examination. The suggestion that the regulatory nature of proceedings under the Provincial Offences Act somehow diminishes the need for real scrutiny of witnesses is unsound. Indeed, the opposite is true, in our view. Severe consequences flow from convictions under provincial legislation. People go to jail, licences are suspended and fines are imposed, sometimes in the hundreds of thousands of dollars.

The proposed amendments purportedly were designed to make better use of police officers' time and to minimize disruptions to their regular police duties. Notwithstanding that these proposed amendments will permit an officer to give evidence from a remote location, it will in no way reduce or restructure the time that an officer must give to the trial process and serves to undermine the face-to-face examination process currently afforded by required courtroom attendance. Accordingly, the time-tested model of examination and cross-examination should, in our view, remain intact and unfettered. We respectfully submit that hindering the meaningful examination of witnesses does not promote access to justice.

We recommend the deletion from the act of the proposed amendments to the Provincial Offences Act that provide for the delivery of evidence and cross-examination of witnesses by electronic means.

Further, section 26 of the act repeals section 29 of the Law Society Act and replaces it with the provision that only barristers and solicitors will be deemed officers of every court of record in Ontario. We respectfully submit to you that it is in the public interest and in the interest of justice that all licensed legal service providers, whether licensed as barristers or solicitors or licensed to provide legal services, be deemed officers of every court of record in Ontario.

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We recommend that section 29 of the Law Society Act be repealed and the following substituted therefor:

"Every person who is licensed to practise law in Ontario as a barrister and solicitor and every person who is licensed to provide legal services in Ontario is an officer of every court of record in Ontario."

Mr. Burd: We appreciate this committee's consideration of our submissions. We're now open to any questions that you may have.

The Vice-Chair: We have 20 minutes for questions and comments. I believe Mrs. Elliott has the first lead.

Mrs. Elliott: I'd just like to thank you for your presentation. You've raised some issues different from some of the ones that we've been hearing today, all of which we will definitely consider as we go forward with our

consideration of this legislation. I'm sorry that you had to come back twice as well, so thank you for bearing with us.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, folks. First, I appreciate your having any—nobody's had any interest whatsoever in the amendments to the provincial offences legislation that will deal with the taking of evidence, when it's one of the most dramatic and dangerous things that we've broached, especially when, again, it's not in the bill. We have no idea what these guys have in mind. Videoconferencing, on a good day—it could be a mere telephone call; it could be by affidavit. That's pretty scary stuff. As I understand it—Mr. Zimmer, help me—the courts already have considerable discretion to allow for flexibility in how evidence is given, depending upon the circumstances. It seems to me that that's where we should leave the matter. This is dangerous stuff, so I appreciate you folks focusing on it and having interest in it.

The other thing: officers of the court. We're officers of the court by virtue of being lawyers. I don't know why you'd want to be an officer of the court, because by virtue of being an officer of the court, all that does is make me more subject to the judge's authority than a person who isn't an officer of the court would be. In other words, judges can make us do things that they can't make non-officers of the court do. So tell me about that.

Mr. Burd: Well, we wouldn't want to have any advantages that a barrister and solicitor doesn't have.

Mr. Kormos: But what is in it for you, from your point of view?

Mr. Brown: I'm happy to address that. When Greg or I or other people in our position stand up in a courtroom and say something, we want it to be accepted at face value. Quite frankly, with our status as paralegals now, it's not—not always, anyway. It's a real difficulty. If people like myself are going to be subject to almost the same requirements as lawyers and barristers and solicitors with regard to our conduct—ethical conduct, professional conduct—and almost identical responsibilities to our clients, why wouldn't that then be reflected in the legislation? Why wouldn't the presiding jurist, be it a provincial court judge or justice of the peace, be entitled to rely on the status of myself, for instance, as a person licensed by the law society to provide legal services and be able to rely on what I say as being true? It would allow the court to discharge its function more efficiently, it would allow us to provide better service to our clients, and it just makes perfect sense.

Mr. Kormos: I appreciate that. Perhaps, Chair, we can ask legislative research to give us a little paper on the history of officers of the court, what the implications are. You're quite right: The bill very specifically identifies only barristers and solicitors as officers of the court. If the government is trying to sell the law society's regulation of paralegals, it seems to me it would be a selling point for it to be able to explain to paralegals all of the advantages of being a member of the law society.

Commissioners of oaths: Are you folks not getting the Attorney General's office to give you commissioner status in your respective offices?

Ms. Crisp: We have certainly asked for that.

Mr. Kormos: But are you not able to make the specific applications and pay the—what is it—\$75?

Ms. Crisp: We feel that in connection with this legislation, it should happen automatically.

Mr. Kormos: Okay.

Ms. Crisp: I don't know, as a standard—

Mr. Brown: You can make an application now.

Ms. Crisp: Yes, you definitely can make an application.

Mr. Kormos: Is there a problem in them being granted?

Mr. Brown: Without saying too much, what I would expect is that—

Mr. Kormos: Please do.

Mr. Brown: —the requirements to be a commissioner of oaths now are actually lower than the quality of candidate you're going to have post-legislation.

Mr. Kormos: I agree, but just let me know: Is there is a problem, or is there basically no problem in terms of paralegals applying for commissioner of oaths status?

Mr. Burd: I don't know that it's a problem. I just know that the ones who have the parameters placed upon them—basically they're only a commissioner for the district or location that they're in. So if they were to be doing a case in Napanee and they're operating out of Owen Sound, they wouldn't be able to commission an oath outside their jurisdiction.

Mr. Kormos: Okay, that's interesting.

The other thing is the equivalency. Again, that's a problem because that's not something—I'm glad you did talk to us about it. Many of us have been interested in it, the grandparenting phenomenon. But that's not what we're going to be asked to vote on, I suspect, at least at this point, because that's something that's being delegated to the law society.

Ms. Crisp: Perhaps it shouldn't be, though.

Mr. Kormos: I'm sorry?

Ms. Crisp: Perhaps it should not be delegated to the law society. I think it's far too important a point to be left to the law society.

Mr. Kormos: "Ms. Crisp says to Mr. Zimmer." Look, I appreciate it, because, as you point out, in other legislation that dealt with regulated professions, it was in the legislation.

Ms. Crisp: Correct.

Mr. Kormos: And again, appreciating that the fine print, the minutiae, might be left to regulation, the basic structure of equivalency was addressed in the regulation of midwifery as a profession here in the province of Ontario.

Ms. Crisp: That's right.

Mr. Kormos: We don't know very much about the development or any work that has been done so far on training programs. Have you folks been involved as consultants or participants in discussions around training

programs from either the private sector of training—they spoke to us earlier—or the public sector?

Ms. Crisp: I have been involved at various points in time with the community colleges, various different programs.

Mr. Kormos: But in anticipation of the regulation of paralegals?

Ms. Crisp: Yes.

Mr. Kormos: What sort of things have been talked about? What's being discussed?

Ms. Crisp: In terms of—

Mr. Kormos: The types of training, the types of academic background that's going to be a prerequisite.

Ms. Crisp: Initially, what every college is looking at is a two-year program that will address the needs that will be brought forth by virtue of the regulation. In addition to that, going along with equivalencies, they are looking at a program—for example, Durham College offers a one-year program that just started this September which looks to me, based on the curriculum, to specifically address someone who would be seeking to get the upgraded education that would qualify him or her to meet the equivalency standards to write the licensing exam.

Mr. Kormos: Okay. The private college that was here yesterday was demonstrating a one-year program to us and, without specifically saying so, was suggesting that that was the type of curriculum that was appropriate. So you're saying it's a two-year curriculum that's being looked at as a base?

Ms. Crisp: No. There's a one-year program that right now appears to be only offered at Durham College. But it specifically says, through its outline, that it's directed to those individuals who have prior academic qualifications or prior work experience who may be seeking to qualify to write the licensing exam.

Mr. Kormos: Why are there so many factions in the community of paralegals? You know that, had there not been so many factions, had there been one voice or at least one broader dominant voice, paralegals would probably have been well on their way to self-regulation in one form or another some time ago. What's the problem?

Ms. Crisp: I'll let you answer that one.

Mr. Burd: Twenty years ago, with the Lawrie decision, the scope of practice for paralegals was basically in a tribunal or in a court where there were checks and balances: You had a prosecutor, you had a justice of the peace or a provincial judge. So there was always a check and balance, and if somebody was incompetent, it could be caught and it could be saved. But as 20 years have gone on, the practice has expanded and it has gone into areas where there aren't any checks and balances, where you're not in a court doing solicitor-type work. The Institute of Agents at Court is basically people who appear in tribunals where those checks and balances are always there. Where the factions separate is where you have people doing solicitor-style work as opposed to people appearing in provincial offences courts. We don't seem to be able to agree on certain issues, although we all agree, I believe, that we should be regulated.

1610

Mr. Kormos: By whom? Mr. Zimmer was going to ask you this.

Mr. Burd: Maybe I'll wait for Mr. Zimmer.

Mr. Kormos: No, no. I'll take the luxury of asking you—well, let's wait for Mr. Zimmer; let him ask you. Otherwise, he wouldn't have any questions left. Thank you very much, folks. I appreciate very much your being here.

The Vice-Chair: The government side. Mr. Zimmer.

Mr. Zimmer: Thank you for your very detailed presentation today and at various other times that we've met at the Attorney General's office on this. I think it would be useful to the members of this committee if I asked each of you for your professional background. You're members of the institute, but in the private world what do you do? Susan?

Ms. Crisp: I'm actually an in-house law clerk with the law firm of Goodmans, and I've been there for 15 years. I also run an independent legal education and training business through which I provide training to other in-house law clerks, other groups of independent paralegals in certain specific areas of law, on certain legal-specific software and then also provide training to the colleges, to their classes in various different areas.

Mr. Zimmer: Greg?

Mr. Burd: I'm the president of a company called Not Guilty Inc. Since 1986, we've been running our head offices in Brampton, Ontario. It's a family business; my father started it. He was a Metro Toronto Police officer for 23 years. We had a lawyer who was sharing office space with us.

My background: Actually, I'm a musician. I was a musician on the road for so many years that I wanted to get off the road, and that's where my training came in. I had 20 years, basically, in the provincial offences court, watching the jurisprudence grow and develop under the Provincial Offences Act scheme. That's my background.

Mr. Brown: I own a company called Redline Legal Services Inc. We defend people in provincial offences court. The vast majority of our clients are facing driving-charge charges.

I started in 1991. I went to work at a company that basically did the same thing—it was a group of ex-police officers—and I've stayed in the field ever since. That's really what it all boils down to. I don't have anything else relevant to legal provisions.

Mr. Zimmer: I'd like to ask each of you, just as a very short question—and you clearly support the concept of paralegal regulation, but let me ask you each this, the answer from 30,000 feet: Why would each of you, given your personal experience and history with the institute, support the concept of paralegal regulation?

Ms. Crisp: I support the concept of paralegal regulation because I think that it's important that a bar be established, that standards be established for education, for ethics, for performance on a day-to-day basis. It's important that the public be protected, and I think that's

the only way that that protection is going to be provided. The time is overdue for that protection to be put in place.

Mr. Burd: I would second, and place an emphasis on the protection of the public, especially in the areas where we practise, which is in the provincial offences court, dealing with traffic offences, mainly. There are some people out there who advertise in a way that I can only say is unscrupulous and misleading, so much so that we've built up a case with many examples and many complaints and we've forwarded it to the Competition Bureau, but either they don't have the means or the people or the time to pursue this type of false and misleading advertising. I see regulation as a means to ending that kind of unscrupulous business-type practice in the independent paralegal world. That's really the gist of why I can't wait for some regulation to come into place.

Mr. Brown: When a member of the public hires a paralegal and they sit across their desk and listen to a whole bunch of legal jargon, a lot of information that may or may not be true, a member of the public really has to take a leap of faith, because you're not buying a widget. You could pick up this glass and look at it if you wanted to buy it; you could analyze it and see if it's something that holds no broken promises. But legal services—it goes for legal services of all types—you really have to put your issues in the hands of a third party who may or may not have your best interests in mind.

The vast majority of people providing service, in particular in the field of provincial offences, do an excellent job. It's really a niche type of service that's being filled. The commentary from earlier commissions, like the Ianni report and the Cory report, have all had relatively good things to say about provincial offences agents. There are a handful—I'd say 10%—who make 90% of the trouble. There are no teeth in any legislation right now that can effectively deal with them; I think they have to be dealt with. I think the government owes it to the public. Responsible professional provincial offences agents like myself, Greg and anybody else who has taken time to turn their minds to the bill, need that too; everybody needs it.

Mr. Zimmer: Thank you very much and thank you for coming back today. Sorry we couldn't hear from you yesterday afternoon.

Mr. Kormos: Do they have any opinion on who should be regulating the paralegals? I didn't ask them that because I thought you were going to ask them that. I don't know what it is.

Mr. Zimmer: Your questions are finished and my questions are finished.

Mr. Kormos: Who should be regulating the paralegals?

Mr. Burd: Our mandate would indicate, to be quite frank with the panel here, we'd fall in line with the Ianni and the Cory report: anybody but the law society, but that's the mandate we have from our people. I know they tell you that it's better the devil you know than the devil you don't know, but that's our mandate: regulation by

anybody but the law society; however, regulation is at the top of the chain.

Mr. Kormos: Okay. I appreciate it. You've been very fair.

The Vice-Chair: I certainly want to thank you for, first of all, accommodating us by coming in earlier and

returning. So I certainly appreciate the brief that you have brought to this committee.

This adjourns the hearings for today.

The committee adjourned at 1618.

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Standing committee on justice policy

Access to Justice Act, 2006

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Loi de 2006
sur l'accès à la justice

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Monday 11 September 2006

Lundi 11 septembre 2006

The committee met at 0906 in room 151.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006
SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Vice-Chair (Mrs. Maria Van Bommel): Good morning, everyone. I welcome you to the standing committee for justice policy.

CITY OF MISSISSAUGA

The Vice-Chair: At this point I would ask that the city of Mississauga's Mayor Hazel McCallion please come forward. Welcome, Mayor McCallion.

Ms. Hazel McCallion: Thank you. Good morning, everybody.

The Vice-Chair: Good morning to you. I just want to lay out that you have half an hour to make your presentation. You can use the entire half-hour for your presentation. If there's time remaining, then there's an opportunity for members of the standing committee to make comments or ask questions. If you would introduce yourselves for the record. We all know who you are, but if you could, please, and then we'll proceed.

Ms. McCallion: Hazel McCallion, mayor of the city of Mississauga. I have with me Mary Ellen Bench, our solicitor, to my left, and to my right is our clerk, Crystal Greer. In the audience are Larry Murphy, who is the court manager in our city, and Doug Meehan, who's the prosecutor. So I've got a team with me that knows what's going on.

Thank you for the opportunity. Bill 14 contains amendments to a number of pieces of provincial legislation relating to access to justice. Schedule B will make amendments to legislation respecting justices of the peace to allow justices who have retired before reaching the mandatory retirement age of 70 to be retained on a per diem basis to deal with the backlog existing in provincial offences courts.

I have written to the Attorney General and to the Premier several times over the last couple of years, expressing my concern about the serious situation that is developing in our provincial offences court, because justices of the peace are not being appointed fast enough. As a result of the lack of justices, our courtrooms are sitting empty. At the same time, serious cases are piling up and are at risk of being stayed because of the length of time it takes to get them to trial.

When responsibility for the administration of provincial offences courts and for the prosecution of Highway Traffic Act and a number of other offences by municipal prosecutors were transferred to the municipalities in 1999, we entered into a memorandum of understanding with the province. Under that agreement, municipalities accepted responsibility for administering the provincial offences courts according to the principles and performance standards set out in the MOU. In order to do this, municipalities receive most of the revenue from fines imposed by the court. This revenue is needed to offset the costs of providing the building, the administrative and prosecution staff, and paying the full costs of the justices of the peace associated with these courts.

While fewer justices can mean less fine revenue to pay these costs, I want to stress that this is not about revenue; this is about the administration of justice. The Attorney General continues to be responsible for the integrity of the administration of justice in Ontario in accordance with the Ministry of the Attorney General Act. The shortage of justices of the peace is certainly challenging the integrity of the system. In fact, municipalities are being forced to add more police officers to lay charges, and then what happens to them?

It was almost exactly one year ago that I was told by the ministry staff at an AMO conference that there was no shortage of justices of the peace. I brought these ministry officials into a meeting in my boardroom with Associate Chief Justice Ebbs and our Senior Justice of the Peace Carole Jadis, who is now retired, to hear at first hand how the shortage of JPs was impacting the proper administration of justice in the city of Mississauga and surrounding areas. Needless to say, they left with a different perspective on the issue. I might mention that Mr. Ebbs came with a letter that he wrote to the Attorney General in 2004, clearly outlining the need for justices of the peace, and yet the staff was advising the minister that

there was no shortage. I can assure you we had an apology from the person who made that statement.

Since that time, the backlog in the Mississauga court is getting worse, not better. While we have seen media reports when new justices of the peace are appointed, what the media do not report is that these appointments don't even keep up with the numbers of JPs who are retiring or who are out of the system due to long-term illness. The presentation by the Association of Justices of the Peace of Ontario on Bill 14, dated April 27, 2006, states that the size of the justice of the peace bench has shrunk from a high of just under 330 three years ago to a level of 305 at the time of the report. Despite a couple of appointments since then, I understand that this number is actually smaller today, around 300.

The availability of justices of the peace in municipal provincial offences courts is also seriously affected by the other duties that these same justices must perform. As Associate Chief Justice Ebbs has advised, demands for the services of JPs in matters such as bail hearings are considered more important than provincial offences court, with the result that the resources available to our courts are quite limited. As a result, we are unable to get the number of justices of the peace to sit in our courts for trials to be heard within a reasonable time. In fact, it is not uncommon to have the limited resources made available to us pulled and reassigned to other duties, leaving us with a gap, and often scrambling to either re-schedule trials or, when these things happen on the actual day of court, having to find a justice of the peace who will deal with the dockets from two courtrooms to the extent it is possible to do so.

In the year leading up to July 2005, the Mississauga POA court received 80,262 charges. In the year leading up to July 2006, this number had increased to 85,982 charges. Attached to my presentation, I have included these statistics—as provided to us, by the way, by the Ministry of the Attorney General. In trying to schedule charges, all available court dates have been used and the backlog has grown in the one year alone by 7,500 charges. City staff are working hard to prioritize what charges get scheduled for court because, as you know, charges that cannot be tried within a reasonable time will be stayed as a result of an infringement of subsection 11(b) of the Canadian Charter of Rights and Freedoms.

Even though we work to ensure that our more serious charges are heard as quickly as possible, we are facing more applications to have charges stayed because of delay. In the six months ending July 2006, Mississauga received 371 applications to have charges stayed for delay. During August alone, another 113 applications were received, bringing that number to 484 charges. Clearly, word is getting out that we have a problem.

The time to get to trial has also increased from 12 and a half months to 14 months. In the first six months of this year we have already exceeded the number of 11(b) charter delay applications received in 2005. In this last year, we saw sitting time in our courts decrease by 29%, and a significant amount of that trial time had to be spent

arguing applications respecting delays, which resulted in even further adjournments for charges not reached.

Looking forward, between August 2006 and the end of the year, 33% of our courts will be closed, 67 court days, and 40% of our courts will be closed from January to July 2007, 101 court days. We still have 12,000 charges to be scheduled, and we don't know where to put them. Approximately one third of them cannot be scheduled because of the lack of justices of the peace. We can't schedule more charges in the existing court time, as we must follow judicial directives in this respect, and if matters go to trial, further adjournments and further delays would result, not to mention the waste of time of witnesses, including police officers, who must attend court. I took a picture last summer in front of the Hensall court before we took over. There were 12 police cars lined up, when they should be out on the street and in our community looking after crime.

Needless to say, Bill 14 will provide some welcome relief to the system by adding justices of the peace on a per diem basis to deal with this backlog. This is a useful response to all of the letters I have written and meetings I have held to bring this matter forward, and I hope it proceeds without further delay. I appeal to the opposition in that regard. We undertook together to improve services to the public with the goal of putting in place the most modern, efficient and effective justice system attainable. The city is doing its part: We built a new courthouse, and so did Brampton, and we have the staff to meet our obligations. Now it's up to the province to come through with the necessary justices to allow the system to work. By the way, we share justices of the peace with Brampton.

Regarding the other matters contained in Bill 14, I welcome any effort that will streamline or create efficiencies in the current Provincial Offences Act courts. The city of Mississauga has always been proud of the fact that we operate like a business and are pleased to assist in this respect. The proposal for allowing police officers to give evidence through video and audio conferencing instead of attending at court is a change that promises more efficient use of police time. I understand that the Attorney General is in the process of establishing a working group to undertake a streamlining review of the Provincial Offences Act, and we look forward to participating in this, a very major step forward.

Thank you very much for providing this opportunity to appear and bring these matters to your attention. If you have any questions, I would be pleased to answer them or have staff attending with me respond. I must also add that I have a group that is working together to put a report to me on the administration of justice in our area and the problems we're facing, and I will be presenting that to the Premier for action. It's serious. When we have police officers charging people, finding them guilty of crime—asking us to add to our police budget, which is growing rapidly, and, quite honestly, putting more police officers on the street will not succeed unless we have the justice system reviewed and improved.

The Chair (Mr. Vic Dhillon): Thank you, Your Worship. There are about seven minutes left for each party. We'll start with Mr. Runciman.

Mr. Robert W. Runciman (Leeds-Grenville): Thanks very much, Mayor McCallion. That was very interesting. I think it should be alarming to anyone paying attention to the challenges that you're facing and I suspect many other municipalities across the province are facing. I gather you have to be optimistic; I guess you're an optimistic person by nature. But as someone who has spent some time looking at this legislation, I'm not terribly optimistic that it's going to address the many challenges that municipalities like yours are facing currently.

One of the things that I think you and I would—you make reference here in a positive way with respect to the part-time JPs, who under this legislation will essentially be retired JPs, who then can, on per diem basis, provide those services. But there's no indication of what kinds of numbers we're looking at. Of course, you and I both go back long enough that we can remember when JPs in this province were effectively part-time JPs. That was changed by the NDP government to become this full-time, salaried group. I've been a long-time advocate of having a roster of part-time JPs, not simply retired JPs, but folks who can work and who don't have the costs associated with them in the sense of all of the benefits that go along with a full-time employee. I think the system worked very well 15 or 20 years ago, certainly much better than is currently the situation. I would like to see an amendment to this legislation to allow for the creation of a roster of part-time JPs, people who would meet the necessary qualifications. In my view, that would help enormously.

0920

I'm curious about a couple of things, and I'll try not to take up all my time so you have an opportunity to respond. It would be interesting to know, in terms of your court, what's happening with respect to remands. This is a problem that we hear occurring with remand after remand after remand, so that you have some judges, some JPs, remanding cases, where the defence bar is asking for these remands or for whatever other reasons there might be. That is, in essence, not assisting the situation.

When we talk about the Attorney General and Justice Ebbs telling you there's no shortage in terms of pure numbers, maybe they're right, but it's the way the courts themselves are operating. In fact, they are not operating in a very efficient or effective way and they're not dealing with these cases in a timely way. That may be another element of this that merits more consideration than is being given by this legislation.

Another element that I'd like to talk to you about—I heard this from people in my own riding in the united counties of Leeds and Grenville. With the transfer of the POA responsibilities to municipalities, there was also at the time transferred to them something like \$2 million of uncollected fines. That has now grown to about \$5 million. I guess the significance across the province is really

substantial: hundreds of millions of dollars in uncollected fines. Part of the problem is that the municipalities don't have the authority to get the information through the Ministry of Transportation. With the information the province had when they operated the POA, they could go out and go after these folks who weren't paying their fines. Municipalities are not allowed access to the same kind of information, so you can't pursue these unpaid fines to the extent the province could when they had the authority. I'd like to hear what your situation is in your own municipality.

Ms. McCallion: I'd like the staff to comment on it.

Mr. Runciman: Sure.

Ms. McCallion: They're dealing with it every day. They just try to keep me in the picture as to what action should be taken. Mary Ellen?

Ms. Mary Ellen Bench: With respect to the remand issue, we don't keep statistics on the number of matters that are remanded or adjourned.

Mr. Runciman: Do you think we should on a court-by-court basis? I'd like to see that happen and to base it on the judge and the JP numbers. I think that kind of annual reporting would be very helpful and would ensure that those folks are doing their jobs the way they should be doing them.

Ms. Bench: Possibly. However, our experience has been that most of the remands tend to result from the shortage of justices, rather than from delay information. I think the problem you're referring to is one that's more at the higher court level as opposed to at the provincial offences court.

With respect to the uncollected fines, I think that would be a great tool if we could get access to that database. It certainly is an issue that we have that we're trying to deal with. We have some new tools that came in with the Municipal Act, 2001, in terms of using collection agencies, only that hasn't been quite as successful as we would have hoped. So I think it would be very useful.

Mr. Runciman: Okay. I'd like to hear the mayor's reaction to part-time JPs, because she—

Ms. McCallion: The which?

Mr. Runciman: With having a roster of part-time JPs to supplement the full-time.

Ms. McCallion: Yes, as long as they're qualified to do it. I think what the government is trying to do—quite honestly, I've been around a long time. Most of the JPs appointed are defeated politicians. Sorry. And all governments are guilty of that. No one party has that privilege. I think to improve the qualification of justices of the peace is a good move. I think there should be qualifications and there should be a clear process they must go through. Anything to help. If they're qualified, a roster of part-time would be quite acceptable. As long as they're qualified; that would be my position.

Mr. Runciman: Okay. Thank you.

The Chair: Mr. Kormos?

Mr. Peter Kormos (Niagara Centre): Thank you, Your Worship, and your staff. On the matter raised by

Mr. Runciman about your access as a municipality to provincial databases in terms of tracking down convicted offenders and collecting fines, could you be more specific? Could you elaborate and explain what the status quo is and what you need?

Ms. Bench: We have access to the ICON database in terms of the provincial registry. What the province had and what we were looking for in other submissions before—and I think it will come out in part in the POA streamlining—is the same kind of tools that they have to apply fines to get driver's licence information through the Ministry of Transportation database. Through ICON, we can track charges that are registered, and that gives us certain information, but our ability to access the remedies that the Ministry of Transportation has, like applying fines against driver's licences the way that, say, the 407 is able to, those kinds of things would be very useful to us.

Ms. McCallion: It's interesting that the 407 has the right to withhold your licence if you don't pay your bill. I don't know when the government will extend it to Visa. That would be very helpful.

Mr. Kormos: So you can access the Ministry of Transportation right now in terms of their information. How do you do it?

Mr. Larry Murphy: Yes, we can access the information that MTO has, but the largest problem is—

The Chair: Sorry to interrupt. Could I have you introduce yourself first for Hansard?

Mr. Murphy: Yes. Larry Murphy, and I'm manager of the courts admin. in Mississauga. With MTO, if you want access, basically you pick up the phone and you ask about the licence, which is extremely time-consuming, and you can't be doing that. What we really require is that people update their licence information with MTO, but there isn't an automatic feed into the integrated court operating network, so we're operating on old data. A lot of the fines that we're talking about here are pre-1999. I think in our case about \$19 million out of \$22 million is pre-1999, where there have been collection steps taken.

Mr. Runciman: It's not the case in my riding. It has gone up \$3 million in the last few years.

Mr. Murphy: Okay. But at any rate, the large problem, as I said, is that there is an automatic update of the ICON system when MTO is updated. That affects even our trial setting, because people will give us old addresses. We send the trial notice out and it doesn't get to them.

Mr. Kormos: For instance, a parking ticket, where all you have is the motor vehicle plate number, how then do you access MTO? What's the actual process? How do you get the name and address of the registered owner? Is this a voice machine?

Mr. Murphy: Actually, I'm going to admit to my ignorance on this. I look after the part 1 and part 3 side of the business. The parking side is totally separate and I don't have any involvement in that.

Ms. Bench: Our parking control staff does have access to a certain database, and that's what they use, again,

through the provincial system. But we don't have anyone here from parking. It's a separate group.

Mr. Kormos: I'm wondering if perhaps Ms. Drent would help us in this regard and give us a better understanding of how municipalities access provincial records. Is it one at a time, is it computer access, is it a telephone conversation, are there any charges back to the municipality for this and why is it that they can't access current information as compared to historical information?

Ms. McCallion: We'll do that.

Mr. Kormos: Yes, if you could help Ms. Drent in that regard, I think that would be helpful to us in terms of understanding this problem across the province. Your point about JPs—I can tell you, Niagara region is in the very same boat.

Ms. McCallion: This is province-wide. Don't think that this is just Mississauga.

Mr. Kormos: The problem is, the government has a majority. If they want the bill to pass, the bill will pass, but we still don't have any sort of commitment, never mind even a sense about how many JPs are going to be appointed, because JPs are being appointed now. There were half a dozen—what?—two or three weeks ago. We haven't been told how many are going to be appointed.

Thank you very much. I appreciate it.

Ms. McCallion: Well, a half a dozen won't do it—nowhere near.

Mr. Kormos: Far from it.

The Chair: Any comment from the government side?
0930

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you very much for your presentation, Mayor. Earlier in the process, we had other deputations—and you talked about using police officers in court and the fact that it takes them away from their duties on the streets and in the whole criminal system. So you feel that it's important for them to be able to use video and audio conferencing as a way of testifying at court. We heard last week from one deputation that felt that that impeded a person's right to justice. How would you comment on that?

Ms. McCallion: Well, I support the video 100%. Unless the province wants to pick up the cost of our police services, which it doesn't, it's strictly on the property tax. We're trying to add policemen every year to look after crime because of the increase in crime, as you are well aware. No matter how many police officers you put on the street, when 12 cars are lined up at the Hensall court to do traffic convictions—they should be out on the street, I would think. So I guess it's up to the province whether it wants to fund that portion of the police budget. But it's impeding our activity. I recall a police officer in Toronto on the radio saying, "I arrested a guy this morning with a gun and before I got home at 5 o'clock he was out on the street again."

I really strongly believe, as I know my staff believes, that the justice system needs a complete review and renovation, second to none. I think our administration of justice is favouring the criminal rather than the provision

of protection for the citizens. When I go to court—and I've been to court a few times—and see our police officers sitting there waiting to go into the courtroom—the judge starts at 10 o'clock, and then a lawyer gets up and says, "I want it deferred." So the police officer goes home, and back again. What a waste of time of police officers.

We've got to do something. The administration of justice is costing us an arm and a leg, and it's not performing efficiently, in my opinion. It's time that somebody took the bull by the horns and had the courage to challenge the system and to get some changes.

I've got to tell you, I'm going to prepare a report on what's happening in Peel. I'm not going to the Attorney General; I'm going directly to the Premier to say, "This is the crisis situation that's occurring, and if it's occurring in Peel, it's occurring all over the province." It's not Peel. The time has come that we've got to take action.

The Chair: Thank you very much for your presentation.

THE BATHURST GROUP INC.

The Chair: The next presentation is by teleconference from the Bathurst Group. We're just getting those folks online. Mr. Bathurst, welcome to the committee, and you may begin your presentation.

Mr. William Bathurst: Thank you very much. I'm pleased to speak to the committee this morning. My name is William Bathurst and I operate the Bathurst Group in Chatham, Ontario, a small community in south-western Ontario between Windsor and London.

My practice deals mainly with insolvency consulting. I talk to people about bankruptcy-related issues. There tend to be legal issues in dealing with that, and I feel that under this new legislation consultants as well as paralegals may be required to be registered. Because of this, I thought it might be worthwhile for someone to comment to the committee on the roles of consultants in the legal process.

It's my view that regulation tends to create a lowest common denominator. In many professions as well as union environments, there is a tendency to protect the people in the profession or the union who get themselves into trouble. The people who do their job from day to day and are very proficient very rarely will ever need the services of a regulatory body.

My fear with this legislation in allowing the law society to regulate the profession is that they will create clones, so to speak, in their own image. The effect of regulation on legal services will cause the cost of those services to increase. It may allow lawyers who do not otherwise hire paralegals to hire them. This may be a motivating factor in regulating paralegals, and you will find that paralegals, possibly hired by lawyers, will be competing with independent paralegals and forcing the cost of the services to go up.

If one really looks at what regulates things in society today, it tends to be the marketplace and the courts. I

view regulation as an attempt to keep things out of the court by creating circumstances where, if people follow the rules, a particular item might be dealt with by a regulatory body rather than the courts, and it regulates the marketplace. There are no other professions I could find where their competition regulates them. Accountants don't regulate bookkeepers, dentists don't regulate dental hygienists, doctors don't regulate nurses and things like that. I just don't see why the government is so interested in having lawyers regulate paralegals or purveyors of legal services.

It would be my view that paralegals or people providing legal services be regulated by a society of their peers, just as many other professions do. I think it's important that the government should set up criteria or a bill to create an organization to regulate these, as they have for other services.

In my research, I found that very few paralegals have ever been found guilty of misconduct, whereas it's very easy to find lawyers who have been guilty of misconduct over the years. I don't think it's such a difficult task for the government to set up some type of regulatory legislation to establish something called, say, the society of paralegals to regulate themselves.

There's also a view out there that paralegals are simply frustrated people who couldn't become lawyers or couldn't cut the mustard in school. I don't really think that's a fair representation. I think paralegals or consultants are people who have chosen to assist the public in their various fields of endeavour and who want to do it at a fee that the public can afford.

I hope these brief comments have given you a perspective on the work of consultants and our view of where this legislation sits in the scheme of things. I'd be happy to answer any questions you might have.

The Chair: Thank you very much. We have about eight minutes for each side. We'll skip the NDP and go to the government side. Any questions or comments?

Mrs. Van Bommel: No. Thank you very much for your presentation.

Mr. Runciman: It's Mr. Bathurst, is it?

Mr. Bathurst: Yes, it is.

Mr. Runciman: Bob Runciman from the official opposition. I appreciate your contribution. Some of the comments were dead-on with respect to looking over the history of paralegals and the number who have been found guilty of misconduct or inappropriate behaviour versus members of the legal profession. I think those are valid comments to make.

One of my concerns with respect to this legislation—and I know my colleague Mr. Chudleigh raised the issue about conflict last week. Perhaps that's not an appropriate perspective, but I think an argument can be made that there is a vested interest here. Certainly if you look at what's happening not only with respect to the question of regulation, but I think if you go through this bill and look at the justices of the peace provisions, for example, it's another step towards a full-time, legally trained level of court that thinks of itself as a court, and

sometimes in the worst way—I'm talking about anointed, not appointed. If you take a look at some of the things happening in the courts and the administration of justice, it's again further entrenching the privileges, if you will, of those individuals who have LL.B. behind their names. That's a concern of mine.

0940

One of the things I want to pursue as we go through this process is involving the elected officials to a greater extent in terms of the appointments process for judges and JPs, that sort of thing. Rather than having the lawyers appoint the lay people, for example, having those lay people be, in effect, the elected members of the Ontario Legislature, who represent the people of this province and who then can have some input and scrutiny with respect to who is going to be sitting on the bench and what kind of approach they might take to these continued requests for adjournments, those kinds of issues.

You talked about this concern, and I've heard it from a number of different parts of Ontario—you're talking about the kind of work you do with respect to being a purveyor of legal services, but there are all kinds of individuals across the province, whether they're in banking, real estate or whatever profession they may be in, who have very serious concerns about the broad reach of this legislation, that it's going to impact on them and they'll find themselves in a regulatory stew, and no one seems to know the implications.

I think it's interesting that no one from the government side took an opportunity to respond to that concern. It's not just in your area, but this is a very significant concern across the province. Perhaps you could expand upon what the implications could be for your profession. But also I would encourage someone from the government to provide some assurance for you and others and take the opportunity here to respond and say, "This isn't going to happen. We're only going to amend this legislation in some way, shape or form at the end of the day so that it can't be interpreted in such a way down the road that it's going to impact people like yourself."

Mr. Bathurst: I tend to agree with your comments, but I know my time is coming to an end here, so I'd just like to interject something. There's something that's easy and there's something that's right. The easy thing to do here in this particular case is to give the law society more power than they already have and then say, "Lawyers are the major player in the legal area. Let's allow them to regulate the whole profession. We can abdicate our responsibility as a government and we can let them be responsible." We know that if a bill came out tomorrow called Bill 15, a bill to regulate the legal profession, we'd have such a hue and cry about the required independence of lawyers, that they need to be away from the government, and that these legal services have to be free of political influence and things like that. This is the way I'm looking at this legislation. We're going to give the lawyers the keys to the chicken coop. We'll let the wolves in to manage the chicken coop. It's just awful to me.

If we look at the government's program, whether it's federal or provincial, it doesn't matter what party's in there; there has been a direction away from regulation to deregulation. We've deregulated all kinds of services. Here we are taking a service provided by paralegals that nobody's complaining about, at the insistence of a lawyer—and if you read their briefs for this bill, you can see this is clearly an attempt for them to regulate our profession to their benefit. They believe that if they can regulate our profession to their benefit, that will indirectly benefit the public. I just don't see that.

I'm going to make a very subtle comment. I provide a service that generates a fee. A lawyer charges a fee to provide a service. If you can get the subtle difference between those two things, you'll understand what a paralegal or a consultant does. Thank you.

The Chair: Thank you, Mr. Bathurst, for your presentation.

Mr. Bathurst: I appreciate it.

Mr. Kormos: On a point of order, Chair: I was absent from the committee to try to track down the parliamentary assistant. It is a convention here at Queen's Park that the parliamentary assistant, in the course of his or her stewardship of a bill on behalf of their minister, be present at the committee hearings around that bill. I was loath to raise this for fear that there might have been a personal matter, an emergency in the parliamentary assistant's life, so I went to lengths to determine that there hasn't been. He apparently is simply at another committee today.

I find it very distressing that the government that purports to want this bill to be pursued so vigorously won't even have its parliamentary assistant here to listen to the submissions. It's a matter of great concern for the New Democrats. I appreciate that the Chair can't order the PA to be here, but I tell you I have great concern about the government's commitment to this legislation when their PA can't even bother to show up.

Mr. Runciman: On a point of order, Chair: I want to speak in support of my colleague Mr. Kormos. I think it is highly unusual, and it's really unfortunate that the parliamentary assistant or the minister isn't in attendance this morning. It's regrettable in the sense that we had Mr. Bathurst before us, for example, where an issue was raised about regulation of other professions that could fall under the umbrella of this legislation and have an impact in real estate, banking or whatever endeavour we might be concerned about. The members of the government who were here chose not to comment on that, and that's fair enough because that's the sort of thing, I suppose, that the parliamentary assistant could have addressed—those kinds of concerns. So this is not only a breach of convention, as Mr. Kormos pointed out, but it's also truly unfortunate from the perspective of people appearing before us, where we're not having the opportunity to hear from the government representative, specifically the representative of the Attorney General, when very valid questions and concerns are raised.

The Chair: Any comment? Thank you very much, Mr. Kormos and Mr. Runciman. We do have quorum and

I, as Chair, think that the government members would pass on your concerns and what will be happening here at the committee today.

JOHN BRENNAN

The Chair: We'll move on to the next presentation. It's Mr. Brennan. Good morning.

Mr. John Brennan: Good morning.

The Chair: Are you ready to start your presentation?

Mr. Brennan: Yes. I'll be reading right from the script that was given to you.

Dear Mr. Chair, all committee members and appointees, please accept the submission regarding the newly introduced Access to Justice Act, Bill 14. I feel privileged to stand before you today to make my submission, and I stand before you as a citizen of the province who believes strongly that to ensure access to justice in this province, it will be necessary to make some changes to this bill.

My specific request of you is that you change one word in a specific section of this act and that you refrain from changing one other word that is slated for change. The word that I request that you change can specifically be found in subsection 51.9(1) of the Courts of Justice Act. The current passage reads as follows:

"Standards of conduct

"51.9(1) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the judicial council."

I request that you substitute the word "will" for the word "may" in the previous section so that it would read as follows:

"51.9(1) The Chief Justice of the Ontario Court of Justice will establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and will implement the standards and plan when they have been reviewed and approved by the judicial council."

I also request that you refrain from making the change as outlined in item 6 of schedule A in the amendments to the Courts of Justice Act. Specifically, I request that subsection 51.9(2) is left as is so that it would read:

"Duty of Chief Justice

"The Chief Justice shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the judicial council."

The proposed change would have read:

"Duty of Chief Justice

"The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French, when they have been approved by the judicial council."

0950

I submit to you today that the introduction of the word "any" in this subsection combined with the word "may" in the previous subsection creates a new notwithstanding clause that is very dangerous and will imperil access to justice. I believe that the inferred message here becomes that the chief justice will share standards of conduct for the judiciary, notwithstanding that none exist and notwithstanding that there is currently not any intention of introducing standards of conduct for the judiciary.

To understand the context of my request, I think it is important that I share publicly for the first time the journey that has brought me here today. I have been a practising physician in this province for 20 years. I am a graduate of medical school from the University of Western Ontario, and I am also a graduate of chemical engineering from the University of Waterloo. After 20 years of practice in some of the most risky areas of medicine, I have never had a lawsuit or a college complaint. I am highly regarded by my peers and I am a good citizen of this province and country.

My journey on this issue began several years ago, when I was an expert medical witness in a civil litigation matter. I was the only expert to testify in these proceedings, and the substance of my testimony was not challenged in three days of testimony. For some reason the judge, Justice John McIsaac of Barrie, found it necessary to champion discrediting my testimony once I had left the stand. His conduct and comments in regard to my testimony and character were vicious, cowardly, outrageous and untrue.

Since there was no testimony by plaintiff witnesses to counter my testimony, Justice McIsaac researched the Internet and then declared that my testimony was wrong. He had appointed himself to not only be a physician but also an expert witness on complex medical subject matter. In my work both as an engineer and a physician, one of the definitions of "professional misconduct" is undertaking work that you are not qualified to perform by virtue of training or experience. Justice McIsaac did not feel that his lack of training or experience in medicine was any hindrance at all to his overriding my testimony with his own. He went on to compare me to a wolf, and accused me of either professional incompetence or perjury. Finally, he accused me of participating in a wide-ranging corporate conspiracy to deprive the plaintiff of his rights. This was all based on his own medical research and without my having any opportunity to defend myself from this assault. From my point of view, he purposely set out to destroy both my reputation and my career based on his own flawed research.

I filed a complaint—the excerpt is at tab 1—with the Canadian Judicial Council in June 2005, and it is currently in abeyance, pending the outcome of an appeal. I had tremendous difficulty in filing the complaint because there is absolutely no standard of judicial conduct that is accepted or published. We simply are asked to trust that the judicial council can assess the conduct of a judge against a standard that does not exist. It is the ultimate

irony and paradox that a legal system predicated on laws, standards and precedents for society is administered by a judiciary who have no written standards for themselves.

I researched the complaints process for the Canadian and Ontario Human Rights Commissions and discovered that I needed to file a complaint within a 12-month window. Since my complaints to the judicial council partially involved human rights codes, I filed complaints with both the Canadian and Ontario Human Rights Commissions. Both complaints were not accepted into their system because they have no jurisdiction to investigate judges even for charter of rights or human rights codes violations. I found out that the judicial council had not referred my allegations of criminal wrongdoing—breach of the Regulated Health Professions Act—to the Attorney General. I then asked the Attorney General of Ontario to investigate the criminal components of this complaint, and they declined. That letter is at tab 2.

Since the complaint process was taking so long, I asked the judicial council what happens to my complaint and possible compensation if Justice McIsaac retires before a finding is made. They responded that if he retires, a finding will never be made, and compensation, restitution or restorative justice are never considered if you have been wronged by a judge.

I used to be very angry at Justice McIsaac, as I believe he is a caustic human being and a judge who will issue fatuous judgments and castigate valued members of this society at his whim. I now understand that he does what he does because he is allowed to do it with absolutely no fear of reprisal or threat to his livelihood. The current system where judges have no standard of conduct and virtually no fear of losing their jobs has led to the moral corruption of some judges as well as outrageous conduct, as evidenced by Justice McIsaac. Judges in this province have so much independence and lack of personal accountability that not even the Attorney General of this province will investigate, even if you make allegations of criminal wrongdoing, as I have.

It is now almost a year and a half since I complained to the judicial council, and I have given up any hope whatsoever that they will take my complaint seriously. Worse than that, even if the complaint is taken seriously, there is precious little that they can or will do to Justice McIsaac, based on past history or the legislative framework. There is also absolutely no compensation mechanism for those who have been victimized by the judiciary.

Getting back to the Access to Justice Act, I commend the lawmakers for attempting to bring more access to justice in this province. I submit to you that there can be no justice for any of us if the judiciary are not held accountable. This bill tries to make deputy judges more accountable, but simultaneously makes the judiciary less accountable by not demanding that standards of conduct are developed and adhered to for judges. I implore you to consider seriously the changes I have proposed to introduce standards of conduct for the judiciary.

I would like to finish my presentation with two quotes. The first quote is taken from appendix F of the Courts of

Justice Act, where you can find a document entitled “Principles of Judicial Office.” The quote is a preface to the document, and it reads, “Respect for the judiciary is acquired through the pursuit of excellence in administering justice.”

If this is the mission statement of the judicial council, then they have failed to find a way to implement their own mission statement. I submit to you today that there can be no pursuit of excellence if there are no metrics to measure that excellence, or checks and balances to weed out the weak, mean-spirited or incompetent judges. There can be no respect without transparency and accountability for the judiciary, in my view. It is up to the lawmakers of this province to demand excellence from the judiciary and to develop ways to put checks and balances on judicial conduct and performance.

My last quote is from John Quincy Adams, who tirelessly fought against the corruption that accompanies absolute power. He stated that, “Power always thinks it has a great soul and vast views beyond the comprehension of the weak.”

The judiciary in this province and country believe that a “free and independent judiciary” are necessary to proper justice. I agree with this point of view, but I do not agree that the judiciary themselves have enough wisdom or willpower to police themselves. Therefore, mechanisms and methods to control them and compensate their victims must be sought for proper access to justice to occur. None of us can have true access to justice if misconduct and incompetence of the judiciary are not measured and dealt with.

My journey has led me to conclude that the judiciary have far too much power in this country and province, and they have protected this power and their weak members under the cloak of being a free and independent judiciary.

If you proceed with allowing the change of wording in section 51.9(2), then you are introducing a new “notwithstanding” clause that will be used with great force in the coming years by the judiciary to resist efforts to have their own standards of conduct that they must be measured by. If you proceed with the proposed change to section 51.9(2), then Bill 14 itself becomes internally inconsistent with its own stated objectives of openness, accountability and transparency, as well as access to justice.

Thank you for your time. I’d gladly take any questions.

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The Chair: Thank you very much. Mr. Runciman? A couple of minutes each.

Mr. Runciman: Sure. How much time?

The Chair: About two minutes each.

Mr. Runciman: Thank you very much for your submission—very interesting. I share many of your views. I think I’ve got the JPs mad at me and the defence bar mad at me, and now I’m going to have the judges mad at me, but I tend to agree with virtually everything you’ve suggested here.

The judges—we've seen it over the years—get very irate, publicly disturbed, if there are questions about their conduct. I've seen them, certainly in Alberta, where they challenged the government at the time when they tried to curtail salary increases for judges. Of course, they took it to a higher level of court, and guess who the court supported in that decision? So I think the fingerprints of the judiciary are all over this legislation. Probably the element that you've brought to our attention is another example of that. I think they have to be held much more accountable to the public. Certainly, I'll be putting forward amendments to address many of those issues.

One of the things I raised here earlier was the Ontario Courts Management Advisory Committee, when we take a look at the appointments process of judges. Right now, that body has judges, defence counsel, Attorney General reps and six people appointed by the AG that the judges and the defence counsel approve. I think those six people should be right around this table, the justice committee, so that the people of the province of Ontario have some input into the kinds of people who are going to be sitting on the bench, who are going to be JPs in this province. Those are the kinds of initiatives that I would like to see. Certainly, I'll take a very serious look at what you've proposed here as a possible amendment from our party. Thank you.

Mr. Brennan: Thank you very much.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you very much for your comments. I truly am sorry that you've had this incredibly unpleasant—dare I put it so gently?—experience with the court, unlike some others, and I've seen what I consider, in a very fair way, some real stinkers, both at the JP level as well as at the judge level. But the vast majority of people on our bench in this province, in my view—and I'm as ready to be critical as anybody—are really very skilled, competent people. We're very fortunate in that regard.

There was suggestion of an appeal. This was a judge-alone trial, I presume?

Mr. Brennan: It was a judge-alone trial.

Mr. Kormos: There was an appeal?

Mr. Brennan: The decision was appealed, and the appeal was heard in March and is still outstanding.

Mr. Kormos: You may or may not know whether or not the judge's insertion of himself into the fray was the subject matter of an appeal.

Mr. Brennan: It was central to the appeal, apparently. I had nothing to do with the appeal because I was a witness, but that was my understanding.

Mr. Kormos: Fair enough. It's interesting. I'd really appreciate it if you'd let us know, because you haven't identified the case, what happens in the appeal, because the law in this regard is that the appellate court is going to decide the extent to which this judge misconducted himself in terms of delivering his final judgment. So I'm as eager as anybody to find out the outcome of that appeal. If you'd let us know, I'd appreciate it. Thank you kindly.

The Chair: The government side?

Mrs. Van Bommel: Thank you very much for your presentation. I certainly appreciate your putting a very personal face on what access to justice is. I wish you all the best.

Mr. Brennan: Thank you.

The Chair: Thank you.

Next, we have Mr. Ian Brown. Is Mr. Brown here?

STANLEY GELMAN

The Chair: Mr. Stanley Gelman? Good morning, Mr. Gelman. We'll just be a minute here, if we can distribute your written submission to all the members.

Go ahead, Mr. Gelman. You have 20 minutes.

Judge Stanley Gelman: Good morning, members of the committee.

I've been a deputy judge in the Small Claims Court of the central west region of Ontario, and I sit in Brampton in the Small Claims Court. I'm also a former member of council of the Ontario Bar Association and I am a member of the Ontario Deputy Judges Association. However, I want to stress that I'm not appearing in any capacity for these two organizations but on my own as a concerned citizen to comment on Bill 14. I've attached my curriculum vitae.

I perhaps bring a unique perspective to this committee in that over the years as a deputy judge, I've actually seen paralegals before me and in operation. Quite a number of these individuals over the years have represented themselves as providing legal services rather than as paralegals. This is misleading and deceptive to the public. I myself have been fooled.

There was one particular incident some six years ago when a gentleman appeared before me, extremely well-dressed, appearing as if he might come from one of the big downtown law firms—beautiful letterhead, soft grey vellum, and it appeared to have the name of a law firm—but as soon as he started talking, I said, "What is he here about? He doesn't know what he's talking about. He shouldn't even be here. This should probably have been in front of the Financial Services Commission." It was a motor vehicle insurance case. I looked at the letterhead twice and finally I saw, in the smallest possible print, "Legal Services." Even on the letterhead was a symbol of justice. It was completely and totally deceptive. Strange as it may seem, the insurance company wanted to pay money. They didn't have to under the circumstances, but they insisted on paying money, and they did. He asked for costs. I refused, because he didn't know what he was talking about. It was a case—and I'm being charitable—of the unknowledgeable leading the blind.

I remember seeing a sign on Yonge Street just south of the 401—big, huge billboard sign—"Sam Rad," with a big picture of Mr. Rad smiling and, underneath that, "Legal Services." What do we mean by "legal services"? The public should know what they're getting. That's what my concern is here, that the public not be deceived,

so that they can make an informed, intelligent choice. Once that's done, I'm content.

I have an analogy to the medical profession. Would you allow the designation of everyone providing any service in the medical field as a "provider of medical services"? I think not. Such a definition could include dentists, chiropractors, naturopaths, medical doctors, nurses, paramedics etc. I don't believe the medical profession would be too happy to have themselves just lumped in one big category as providing medical services or licensed to provide medical services. Again, the public should know what they're getting. That's all I'm asking for.

I'll be blunt about it: There are some excellent paralegals, and they do have a place. Some of them are providing excellent service. But they're the few. A lot of them are misinformed on law, disorganized, don't even know what they're talking about. Very often I have to say, "What are you here for? What are the issues here?" I've never seen anybody get up and say, "This is what we're here for. These are what the issues are." I have to discern that for them.

I have a book here, and I'm not going to get into it, but it's a brief of law of what deputy judges can face, because we don't have any research facilities and we don't have any clerks. Negligence actions are one area. Most of the things that I face are going to be contractual or damages. But there are rumours that the jurisdictional level of the court is going to be raised to \$25,000, as it is now in British Columbia and Alberta. Alberta is talking about raising it to \$30,000. Well, so what? That is going to bring more lawyers into the situation; it's going to need more knowledge of the matters. I'm going to need factums of law.

1010

Let me illustrate. I've had two cases on the Warsaw Convention, and most people say, "What are you talking about?" Pearson International Airport is in Mississauga, or in Peel, where I sit. The Warsaw Convention deals with carriage of freight by aircraft. Fortunately, in the two cases, counsel presented me with factums of law that were extremely helpful, and it made it quite easy for me to make a decision. I don't know if a paralegal is going to do that. I've yet to see a factum presented by a paralegal, even though I've asked for them.

Another thing I'm concerned about, too, is the misconceptions. So I want a paralegal to be labelled as a paralegal and a lawyer as a lawyer. Let the public know. I've also seen another for degrees. As I say, are these really existing degrees or has someone just given them to themselves? I've seen the word "CCrim." What does that mean? I don't know. I don't know if any institution has granted that. I've seen the word, on the same letterhead, "CFam," as if you have some sort of expertise in the family law field, because paralegals can appear in the lower courts in family law and in criminal law. It reminds me of a businessman who had the designation after his name "PSD." I said, "What does that mean?" He said, "Hardly anybody ever asks me." I said, "Well, what does

it mean?" With a twinkle in his eye, he proudly proclaimed, "Public school dropout." So you can invent these things.

As for paralegals saving the public money, that's fine. Ask what it's going to cost. When I deal with a client, clients will ask me—and if they don't, I tell them, "This is what it will cost." Sometimes, if you're going into litigation, you can't, because you don't know what the other side is going to do or how long this thing is going to be dragged out.

In summation, I'm here as an interested member of the public to see that the public is protected when they choose whom they want to have represent them in front of a Small Claims Court and the word "paralegal" should be used—a lawyer has a letterhead. If you're a lawyer, "B.A., LL.B." or "juris doctor," whatever it is, you know that. Hopefully, that's an indicator of expertise. It may not be in all cases. That's my presentation.

The Chair: Thank you very much. About three minutes, just a touch more; Mr. Kormos?

Mr. Kormos: Thank you very much for coming today. I've been looking forward to you and others like you reporting on some of your experiences in the courts. Quite frankly, I thought the punch line in the commentary at the beginning was that it was going to be some high-priced downtown lawyer who had no idea what he or she was talking about, because I suspect you've been in that scenario as well. As a matter of fact, I've watched judges, fortunately not as counsel before them, admonish lawyers who sometimes have no business being in a particular court because they have no expertise in that area, and that's a problem as well.

Judge Gelman: If I could interject, I do go to continuing legal education, and I remember Judge Killeen lecturing to us. He sits in London, Ontario. He said, "Ladies and gentlemen, when you give me something, please ensure you know what it means, because very often I get material and I don't know what it means and I don't think counsel knows what it means."

Mr. Kormos: I just want to point this out, because we have only two or three actual full-time judicial Small Claims Court judges left in the province. These deputy judges have to understand an incredibly broad range of law and have to be able to deliver quickly, because they don't have the luxury of doing research and delivering a judgment weeks later; they don't. These are sausage factories. You go to some of our small claims courts and take a look. People rely upon these judges. They're paid a per diem of how much, sir?

Judge Gelman: I think it's \$232.

Mr. Kormos: Two hundred and thirty-two dollars a day. They have to buy their own clerical supplies. Nobody gives them pens or their judgment books. Is that still the case?

Judge Gelman: We get case books, and we are getting some education once a year.

Mr. Kormos: My goodness.

Judge Gelman: But I take issue with you about it being a sausage factory. I certainly do not address or take lightly any case.

Mr. Kormos: My apologies, but you're under incredible pressure. You're dealing with huge dockets, and you've got to deal with these things in an efficient way, more often than not with unrepresented people, unrepresented litigants.

Judge Gelman: There are quite a few unrepresented litigants.

Mr. Kormos: These are the judges who sought some recognition from the Ministry of the Attorney General a year, a year and a half ago. I'm just telling my friends that we'd better be very, very careful, because deputy judges work for peanuts performing an incredibly important role in that judicial system. I just wanted to make note of that while you were here, so that these people perhaps could follow up in terms of—

Judge Gelman: Might I add this: The vast majority—in fact, most—of the civil cases in the province of Ontario are heard in Small Claims Court.

Mr. Kormos: Thank you kindly for coming.

The Chair: Government side? Ms. Van Bommel.

Mrs. Van Bommel: Thank you very much for your presentation. A number of people have come forward—I noticed you were here this morning as well, so you heard from another deputation the concern about who should have jurisdiction over the setting of standards and the scope of practice for paralegals. What is your feeling on that?

Judge Gelman: I think it should be a combination of the law society and the Ontario Bar Association. From the Ontario Bar Association, you're going to get practical input. We now have a deputy judges' association, and I would also suggest that consultation be had for their input too, especially because we're in the field, so to speak, and could probably provide information that the other two bodies couldn't.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you. I appreciate your insights as well. I think it's interesting that you talk about credentials. In my experience in this place over quite a number of years now, I've bumped into a few lawyers—I'm sort of echoing Mr. Kormos—and you wonder if they got their credentials out of a cereal box as well. So it's not just assigned to this one particular group that appears before you.

I'm curious as well. Mrs. Van Bommel asked you whom you felt should be the regulatory authority here. Everyone that you mentioned here—dentists, chiropractors, medical doctors, nurses—are all self-regulated. I'm wondering why you feel it would be inappropriate for this group to have self-regulation.

Judge Gelman: Because, based on my experience, what standards are there? If you're looking at precedent, I see no standards at all. Anybody can appear as a paralegal. There are no restrictions on them. They do not have to have errors and omissions insurance like lawyers do. There's no disciplinary body. I can't see why the law

society, combined with the Ontario Bar Association, can't regulate them. That's my answer.

The Chair: Thank you very much for your presentation.

IAN BROWN

The Chair: I believe Mr. Brown is back. Mr. Brown? This is our 10:20 presentation.

Mr. Ian Brown: Thank you very much, Mr. Chair. Shall I proceed?

The Chair: Yes, you may.

1020

Mr. Brown: My name's Ian Brown. I'm just an average person—not wealthy, not poor. I do struggle to make ends meet as I try to offer my children the opportunities that I enjoyed when I was growing up, and I have, on occasion, had need to access the justice system of the province. Unlike your previous speaker, I'm going to present a view that is based on that experience. In my presentation, I propose to make the point that to subject the paralegal profession to regulation by the law society or any other body controlled by lawyers would be a mistake that will result in a large segment of the population being denied access to justice.

The intent of the bill, as espoused by its name and by the government, is not served—indeed, will be frustrated—by this particular aspect of the content of the bill. I would submit that the bill is flawed in such a fundamental way that this component at least should be withdrawn.

I certainly have no argument with the opinion, as presented by the previous speaker, that the paralegal profession needs regulation, standards of conduct and, indeed, there may have been incidents of misconduct that prove this point. I would note that the legal profession is no different. The solution that seems acceptable for lawyers is self-regulation, not regulation by another professional group, indeed a group that may find itself competing for the same customer—I think that's a very important point—self-regulation; not regulation by someone who stands to benefit from that regulatory role.

In preparing this bill, the government failed completely to consult with the profession it proposes to regulate. I have been told this by numerous paralegals. For this reason alone, this component should be withdrawn and re-examined. Failure to consult with any profession that would be affected in such a fundamental way ought to render such a bill flawed. The paralegal profession will, no doubt, be expressing their concerns, but they should not be relegated to having to do so at the committee stage. It looks suspiciously as though the legal profession had plenty of input while paralegals had none. This is wrong and can only be corrected by going back to the drawing board.

My experience: I have hired paralegals to provide advice on legal matters, assist in the recovery of child support arrears, represent me in traffic court and recover losses resulting from vendor fraud in a house purchase.

I've also referred many friends needing assistance with divorce, both contested and uncontested, small claims and other matters, all to paralegals. Their experience and mine has been, without exception, positive. Indeed, I submit that were this service not available, I would have abandoned efforts to receive justice because the cost-benefit equation associated with the alternative is simply a losing proposition for the client. Let me explain briefly.

In many cases when one seeks a judgment against someone who has behaved inappropriately and basically left you with debts and so on that are their responsibility, the chances of actually recovering money are slim. The tendency, if one has to invest a great deal of money to achieve the judgment, is to simply ignore it, and these deadbeats carry on blithely stiffing other people because nobody can afford to gain a judgment. This is where paralegals can be very valuable. For only a few hundred dollars it's possible to obtain a judgment. I suppose one could do it oneself, but let's face it, we're all busy. I have to work hard to earn the money to make ends meet. I don't have time to be playing this game myself.

Let me tell you a little bit about my own experiences. My first example involves Small Claims Court. I have a number of friends who are lawyers. Most people do not have this option and certainly do not have the \$300 to whatever per hour to find out if and how they ought to proceed on a matter. I've had this luxury, and advice I received in one particular instance was that a lawyer would be too expensive so I should take the matter to Small Claims Court myself. I went down to College Park and picked up the forms. I got what advice I could from the staff there, but I went no further because I know nothing about how to present a claim in a way that will have any chance of succeeding. That's what a paralegal can do.

Recently, I had another occasion to go to Small Claims Court. I might add that the problem arose because the lawyers on both sides of a real estate transaction ignored my concerns that the vendor might not deliver the house in the condition it was in when the offer was accepted. Indeed, taxes and water bills were owing and major appliances had been damaged beyond repair. My lawyer's advice: "Go to Small Claims Court." So I am, but this time with the help of a paralegal. In fact, I have been assisted by three paralegals on this case, and I'm completely satisfied with the assistance I'm receiving. While a lawyer might be able to provide the same result, the cost could wipe out any recoveries I might make, so I would just abandon it.

Let's face it: People are rational economic beings. Why spend \$10,000 to maybe get \$10,000 back? Every day, average people suffer losses due to unscrupulous people. Why should they not be able to recover something through the courts? Why should any recoveries simply end up as revenues to lawyers?

I've also received advice and assistance with traffic tickets. My experiences in this area have been completely positive. The firms assisting in this area charge fees com-

mensurate with the charges, and the many, many companies that engage in this activity are testimony to the demand from the general public.

Finally, I relate to you a situation that is all too common here in Ontario. When I first met my wife, she was in the process of getting divorced. A five-figure legal bill achieved a child support ruling of \$500 per month, with arrears to be paid at \$100 per month. The lawyer who represented her recommended that the payment be made through the body now known as the FRO, the Family Responsibility Office. That was the last we ever heard from him.

One of many considerations in deciding to get married was indeed the fact that this matter had been settled. Today, the outstanding child support owing on this file exceeds \$100,000. Despite following the FRO's rules faithfully, we have received but one payment from them in over 15 years for about \$2,000. This one payment was the direct result of tenacious effort by a paralegal who was to have appeared this afternoon. This same paralegal feels threatened by the law society for offering services to assist people seeking uncontested divorces, and, I have just learned, will not appear because of concerns about what might happen.

This is the dynamic that Bill 14 seeks to formalize. It is tantamount to putting the fox in charge of the henhouse. The bill will decimate the paralegal profession and relegate most of them to working, if at all, as clerks to lawyers where their services will be charged out at double what they now charge. But this is not the worst of it. The loss of access to justice through economic constraint for the less well-off in society will be staggering.

I urge this committee to recommend to the government that Bill 14—at least this component of it—be withdrawn pending proper consultation with the paralegal profession, a profession that is ready and willing to engage in self-regulation, a profession that indeed cries out for greater opportunities for training and self-governance. I ask the committee to recommend that a proposal for a suitable form of self-regulation be requested of the profession. I ask the committee to consider the needs of the majority of the population whose incomes are below the national average because I can tell you that if I am unable to access the justice system other than through a paralegal, the vast majority of Ontarians are in the same boat. Thanks very much.

Mr. Kormos: On a point of order, Chair: I was most troubled to hear Mr. Brown speak to us of a scheduled participant feeling intimidated about attending these public hearings. That's a very, very serious matter.

Mr. Brown: I agree.

Mr. Kormos: That anyone—and again, that's all the information we have at this point, and I have no reason to disbelieve Mr. Brown in any respect—should feel threatened or intimidated to the extent where they would not appear before this committee to have themselves heard is a very serious matter. I raise it as a point of order, but I believe it goes to privilege as well—and Mr. Runciman may want to speak to this—in that I'm being

denied and all of us as MPPs are being denied an opportunity to hear from a potential witness because that witness feels threatened or intimidated. I say, Chair, that compels action (1) to determine what the status of this matter is, and (2) to ensure, using the Office of the Speaker and the Office of the Clerk, that a witness is protected from any potential threat and allowed to speak freely before this committee, as we know privilege may well apply—I believe it does—to what witnesses say in these committee hearings as well as us. I'm very concerned, very troubled. This is a very serious matter.

1030

Mr. Runciman: I want to support my colleague Mr. Kormos. When a suggestion is made that someone has been intimidated in terms of appearance before this committee, I think we should all take it very seriously and ensure that whatever investigation can be conducted, be conducted to determine the facts in this matter. If such an occurrence is a reality, we should take the necessary steps in terms of this committee and perhaps even take it to the House if there has been some effort at discouraging a witness to make an appearance and give their views on this legislation. That is a very serious matter indeed.

The Vice-Chair: Thank you, Mr. Runciman. We'll certainly follow up on that particular concern.

At this point we have the rotation, about nine minutes, so that's three minutes each. I believe, Mr. Kormos, that you have the lead on this one.

Mr. Kormos: Thank you, Mr. Brown. I appreciate your participation in these hearings. I suppose the question to be asked that certainly has hovered around this whole process is, why weren't the Cory recommendations, for instance, adopted by the government—a very distinguished, learned, experienced jurist producing some very clear recommendations? Why weren't they adopted even in part by this government?

The other interesting thing, and I come with an open mind to this whole hearing process, is that we haven't heard from any paralegal yet who supports, endorses, regulation by the law society. That causes me some concern, because for this proposal to be legitimate, it has to be accepted in no small part by the people who are going to be subject to the regulation as well. So I'm anxiously awaiting the government to come forward with some folks in the paralegal community who rally around the government's cause of having the law society regulate them.

I'm just indicating that I find it amazing that here we are at this stage in this process and not a single paralegal has come forward wanting to be regulated—as a matter of fact, a very competent panel of three on Thursday afternoon. When I finally put the question to them, you recall that, they said, “Yes, regulated, of course, by anybody but the Law Society of Upper Canada.” My goodness, that was a pretty powerful comment. Do you remember the three people who were here: one with a very senior position in a major law firm; two others very competent—it appears to us, I'm sure—in the field of paralegal litigation? Amazing. Remarkable.

Thank you very much, Mr. Brown. You bring a real-life perspective to this. There are other folks who will want to ask you things or say things to you.

The Chair: Thank you. Any comment from the government side?

Mrs. Van Bommel: Thank you very much, Mr. Brown. I certainly share the concern about someone feeling intimidated. This is a very democratic society, and we certainly want to make sure that everyone feels they have the right to be heard. I appreciate your bringing your personal experience to our attention. Thank you very much.

The Chair: Mr. Runciman.

Mr. Runciman: Just quickly; Mr. Brown, thank you as well. The witness who preceded you, Mr. Gelman—you were in the audience, I think, for most of his testimony, at least at the end of his testimony—is the deputy judge of the Small Claims Court. I asked him why he felt that it wasn't appropriate for self-regulation and he gave a laundry list of reasons. I'm just wondering if you have any response to what he said here with respect to why he didn't feel that self-regulation was appropriate.

Mr. Brown: I would respond that I feel from my own observations of paralegals that the absence of any form of structure in the past has made it difficult for them to organize in such a way that they could self-regulate. I think that if there is something good to come out of this proposal, it is that it has galvanized them to have to come together and do that. The government may have had a hard time finding a suitable body to do the regulation, but I think the current impasse that has arisen where you have none of the paralegals at all happy with the arrangement has come to pass because of lack of consultation in the first instance, when this was coming forward. It's something that is going to require a fair bit of work, but dodging that work by handing it off to a group that does have some self-interest in the whole exercise is not a good solution.

The Chair: Thank you very much, sir, for your presentation.

Mr. Brown: Thank you. I really appreciate it.

Mr. Kormos: If I can, on a point of order, Mr. Chair: Perhaps before Mr. Brown leaves—and, again, I'm shocked by the comments he makes about the prospect of a witness being intimidated or fearful of the consequences of appearing here; I really am. I don't know what the process ought to be, but it seems to me that Mr. Brown should have an opportunity—he may not wish to reveal any further information. It's his right, I suppose, to decide to do that. But I'm wondering whether the Sergeant at Arms and his office should be involved and whether Mr. Brown should have an opportunity to give them any information that he wishes to help us reveal the source of this concern on the part of a potential participant in these hearings.

The Chair: I believe the Vice-Chair has already addressed this, and we'll definitely be looking into this.

Mr. Kormos: Mr. Brown is sitting here, and we're going to be breaking for lunch in around an hour. What's

he to do? Let's not be the deer caught in the headlights, for Pete's sake.

Mr. Runciman: On a point of order, Mr. Chair: I would suggest that the clerk is going to follow up.

The Chair: Yes. They will be following up and this will be addressed. I don't know what else there is to say. I have been advised of the concerns and you have advised me also. I believe—

Mr. Kormos: Is Mr. Brown being asked to stick around so that somebody can speak with him, or is he being sent on his way? Please.

The Chair: Perhaps—

Mr. Kormos: Do you realize the seriousness of that allegation that was made just 15 minutes ago? Do you realize the seriousness of that?

The Chair: Okay, we'll have someone speak to Mr. Brown about this.

Mr. Kormos: Please.

The Chair: We're going to be recessing until 11 o'clock. The Ontario Public Service Employees Union is not here, so we'll be breaking for about 25 minutes.

The committee recessed from 1038 to 1104.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: Can I have your attention? We're back for our committee meeting today, and our 11 o'clock presenters are the Ontario Public Service Employees Union. Good morning. If I can have you gentlemen state your names for Hansard, and you can begin any time.

Mr. Mike Grimaldi: Mike Grimaldi.

Mr. Roman Stoykewych: Roman Stoykewych.

The Chair: Thank you. You can start. You have 30 minutes.

Mr. Grimaldi: Thank you. President Casselman is unable to attend today. She has asked me to express her regrets for not being able to attend, but we would like to thank the committee for this opportunity. We believe this is an extremely important matter for our union. We have provided the clerk with a copy of our submission, which sets out our position, and we request that the committee consider it.

As the committee is aware, OPSEU is a trade union that represents employees in the Ontario public service and in what is often known as the broader public service. We represent approximately 130,000 employees at the present time. Our members provide services to the public, and in doing so many of them provide advice, information and representation to members of the general public. Very frequently, their advice-giving and representational functions take place in a sophisticated legal environment. In addition, as a trade union, OPSEU is an organization whose very purpose is to represent our members in a variety of legal contexts. Especially in light of the extremely broad regulatory net that Bill 14 provides, the proposed legislation has an impact upon us in two distinct ways.

However, before addressing this impact and some of the concerns we have with the bill, I wish to state on behalf of OPSEU that we are in favour of this legislative proposal. We believe it's high time to regulate legal agents and paralegals. We believe the legislation is necessary to ensure that people who cannot afford the services of lawyers—and these are mostly working people, the kind we represent—will nevertheless be able to obtain the services of a competent, trained, accountable and professionally regulated non-lawyer agent to assist them.

Based on our experience, particularly in the workers' compensation and employment contexts, we are of the view that the quality and trustworthiness of the services provided by paralegals at the present time are entirely unacceptable. Vulnerable people, particularly individuals with limited language skills who have an even more greatly diminished choice of legal services, are being underserved at best and terribly exploited on other occasions.

My own personal experience bears on this. I've represented injured workers for over 30 years on behalf of various trade unions. I have witnessed, very much on a first-hand basis, the serious abuses that working people have had to sustain at the hands of paralegals in the workers' compensation area. I'd like to give you a couple of examples.

I had an experience with a group of paralegals in Kitchener who came from a specific ethnic environment. They were forcing injured workers to provide them with a signature on a contract that gave them lifetime control of their claims. They would also make them sign a contract so that the WSIB would send their cheques directly to the paralegal, as opposed to the injured worker, and they would take their money from those cheques and only disburse whatever they determined was left after they had taken their expenses to them. It included a lifetime subrogation of the claim with a 15% withholding of any benefits forever, and also a retainer fee and an hourly amount.

In Niagara Falls, I saw a paralegal take substantial retainers from injured workers across the whole Niagara region and then just simply disappear: never did any work on the files. The injured workers never even knew where their files ended up.

In Welland, we had a paralegal who charged injured workers a stiff fee to photocopy their files, even though the WSIB does this for injured workers for free. The same paralegal was charging \$500 for a consultation fee just to obtain a re-examination of a worker's pension. Again, the board provides that service for free.

I'm sure you've heard countless examples, just horrific examples, in these hearings. This kind of victimization should not be permitted to continue in a civilized society. There are excellent training facilities for paralegals in this province, particularly in our college system, and we believe strongly that agents who hang out their shingle to provide advice and representation services to members of the public should be required to complete

them. We also strongly support the requirement that these kinds of services be backed by adequate insurance and that the providers of these services be accountable.

Nevertheless, OPSEU is concerned about the extremely broad definition of what constitutes the "provision of legal services" found in subsection 2(1) of the bill, and then its delegation to the Law Society of Upper Canada the task of further delimiting the appropriate scope for regulation. As the bill currently stands, the law society is thus provided with a virtually unlimited mandate to regulate persons who provide legal advice, information or representation to the general public. Even more troubling for us is that it is the law society that is given the power to determine who should be regulated.

We believe the law society's powers in this respect should be more tightly drawn. Although we are sure that there are other areas that might give rise to similar concerns, our major concern is twofold. First, OPSEU believes that the legislation should prevent the law society from regulating employees working in the public service or for analogous service providers who provide individuals in the general public or their employers information concerning their legal rights and obligations. The way it's currently drafted, it means all government employees who provide this service and broader public sector employees would be regulated by the law society, which doesn't make any sense to us at all. Secondly, OPSEU believes the legislation should specifically exclude the volunteers and employees engaged by trade unions who provide advice and representation in the various legal matters in which they are involved to the employees that they represent.

1110

We recognize, of course, that the law society has indicated that it does not, at the present time, intend to regulate in either of these areas. There's no guarantee that will remain forever, but that's what they're currently telling us. Our first point here is one of political process. Government, and not unelected officials, should determine what are, at bottom, matters of social policy. OPSEU does not consider the law society to be a body that is properly mandated with the task of determining whether whole areas of civil society should be regulated. That is the role of government—I'll return to that a little bit later—and it is a responsibility that should not be, and we suggest cannot be, contracted out in the manner that the legislation proposes.

As indicated a moment ago, our first substantive concern with the legislation is the possibility it presents for the regulation of what are broad swaths of the public sector. OPSEU represents social workers, lay case presenters employed with various ministries and tribunals, public health inspectors, employment standards officers, occupational health and safety inspectors, meat inspectors, and various other employees in the public sector broadly understood. All of these employees, and many others, provide members of the general public information or advice about their legal rights and obligations. Some of these act as representatives in quasi-judicial

proceedings. These individuals are highly trained. They perform their duties under supervision, which is often of a professional nature. Frequently, as is the case with social workers, these employees are regulated by a self-governing professional body. Under the definition of "provision of legal services" that is included in the current version of the bill, each of these employees would be susceptible to regulation of their work by the law society and their own professional regulatory body.

The law society, of course, has already recognized that it is unnecessary to regulate employees who provide legal services in this capacity. They are not the problem to which the legislation is addressed, namely, incompetent, unscrupulous and unaccountable agents preying upon individual members of the public. The work performed by members of the public service and the broader public service is invariably performed in the context of highly accountable public institutions, usually the government itself. Their employer is responsible for training them, and it is their employer that is responsible for the quality of the service that is provided. It is the employer that bears legal liability in the event of negligent performance of the duties. In many cases, their work is already regulated by their professional bodies. Finally, in contrast to the mountain of evidence crying out for the regulation of individual non-lawyer agents and paralegals, there is no suggestion that the public has been adversely affected by the absence of regulation for employees providing public services.

This is not a transitory situation. There is no reason to wait and see whether a problem will develop. There is therefore no reason to leave the power to regulate the work of these employees in the hands of the law society. We therefore propose that the legislation be amended to expressly exclude from the scope of paralegal regulation those persons who provide legal services while employed by government or by broader public service agencies providing services to the public. Further, we propose that the legislation be amended so as to preclude from regulation by the Law Society of Upper Canada employees who are already regulated by another professional body.

Our second concern is that the legislation, as currently drafted, may have an extremely adverse impact upon the representation that trade unions provide to workers they represent. OPSEU, like other trade unions in Ontario, by its very nature provides information about legal rights and obligations of employees. It represents employees before the employer and before tribunals. In most regards, the very purpose of a trade union is to establish and enforce the provisions of a collective agreement, which, if nothing else, is a document setting out the rights of employees with an employer on behalf of its members.

Moreover, trade union representation today goes well beyond the simple enforcement of collective agreements. Trade unions provide their members invaluable advice and representation before a broad variety of statutory tribunals in relation to such matters as employment insurance, Canada pension plan entitlements, workers'

compensation matters, and professional licensing and discipline. Moreover, just as we are doing at the present moment, trade unions advance the legislative and political objectives of the members we represent. We submit that this entire range of trade union representation, and not just collective agreement enforcement, ought to be exempted from the definition of what constitutes the provision of legal services.

Historically, and as a matter of social policy expressed in such legislation as the Labour Relations Act, the Crown Employees Collective Bargaining Act, the Colleges Collective Bargaining Act, the Hospital Labour Disputes Arbitration Act and other similar legislation, a trade union is the instrument by which employees' interests are to be advanced both vis-à-vis their employers and also in society at large. The law has never required trade unions to meet the standards of professional representation in the course of the provision of services they provide to their members.

Labour legislation in Ontario and throughout Canada recognizes that trade unions, by their very nature, do not function as professional lawyers in their representational activities. To the contrary, the duty of fair representation found in the Labour Relations Act sets out a very different approach to the issue: Union representation is not to be regulated by the standards of lawyers or professionals in a self-regulating profession, but on the basis of non-arbitrariness, non-discrimination and good faith. That is because trade union representation takes place in large measure through the volunteers that serve in union positions. The large majority of union representation is performed by rank-and-file members, who act as stewards, committee members, local presidents and other similar union officials. These volunteers, of course, do not work on a fee-for-service basis and for the most part receive no compensation for the representation that they perform. The high level of volunteerism present in trade unions makes it a rather unique civil society institution, inasmuch as it advances the social interest in providing employees effective representation vis-à-vis their employers, but it also makes possible a level of participation in shaping one's destiny frequently absent in the experience of many working people. We do not believe that there is any public policy rationale to change this extremely important trade union function.

OPSEU, of course, also employs staff, much of it professional, to provide support for the activities of its members. The same rationale for exempting them from regulation is present as is in place for the employees of the public sector:

The union staff members work on behalf of a large institution that is responsible, both legally and politically, for the quality of the work that is provided to the membership. In many cases, they have the same quality standards that MPPs do: If you don't perform, you don't get elected.

The nature of the work, training, supervision and other support systems of the work that they perform are all arranged by the employer.

None of these individuals work on a fee-for-service basis, and are remunerated on a salary or hourly basis.

To the extent that there are professionals working in the union, they're already regulated by their respective professional bodies.

Overall, the trade union's core representational function is already regulated by the statutory duty of fair representation.

Finally, and perhaps most importantly, there is no identifiable problem concerning the quality of trade union representation that would be meaningfully addressed by regulation by the law society.

Once again, while we appreciate that the law society has indicated that it has no current intention of entering into this area of regulation, we do not believe that the legislation should permit it as a possibility. Regulating the legal service providers in trade unions would change the very face of union representation and, indeed, unionism. It would create a credentialism and professionalization that is contrary to the very concept of the trade union. It would significantly detract from and even eliminate the voluntarism that is so much a part of trade union life, and would impose organizational and financial obligations upon trade unions that they would be unable to meet. To repeat the point we made at the outset of these submissions, this is certainly not a decision that should be made by the law society.

In fact, this is a decision that should be made by the members of the Legislative Assembly. Provincial governments and federal governments right across Canada have increasingly centralized power into the hands of the Premier's office or the Prime Minister's office, leaving legislators with less and less power. We believe that this is just one more attack on the rights of members of the Legislative Assembly. Essentially what this act will do is take away your authority—it diminishes your role—as an MPP to make these decisions, to determine how and what the regulations should be. Why should that be contracted out to any body, whether it's the law society or anyone else? I'm sure that your electors asked you to come to this place so that you could provide these services. These are exactly the types of services you should be providing. It should be your determination how these bodies are regulated and who regulates them. It shouldn't be contracted out to the law society.

Accordingly, OPSEU recommends that the legislation specifically exclude from the ambit of the law society's regulatory power, and thus from the scope of the legislation, the provision of legal services by employees or volunteer representatives of trade unions.

We thank the committee once again for the opportunity to make these submissions. If you have any comments or questions, we would be pleased to respond to them. But please do not contract out what is essentially work that you should be doing, work that it's important that you, as members of the Legislative Assembly, provide. Thank you.

1120

The Chair: Thank you. About four minutes each. Mr. Kormos.

Mr. Kormos: Thank you, both of you. I'm sorry that Ms. Casselman couldn't be here. Please send her my best. I know that Mr. Runciman joins me in that concern of her absence and would ask you to convey his best wishes as well.

You talk about the injured worker and advocacy. Why would any injured worker in this province go to a fee-for-service operator when we've got an Office of the Worker Adviser that has the best-trained, most qualified advocates for injured workers?

Mr. Grimaldi: The Office of the Worker Adviser and, quite frankly, the Office of the Employer Adviser have been underfunded for years. As long as the government continues to underfund those two agencies, many injured workers are at a loss for where to go. There are backlogs in both offices, and both offices are limited in the services they provide, services they used to be able to provide but because of the cuts in funding to both offices are no longer able to provide. So what happens then is that injured workers are scrambling to find proper representation and end up with some charlatan who has hung out a shingle.

Mr. Kormos: So they fall prey, then, to the type of gouging that you mentioned in your submission.

Mr. Grimaldi: Not only do they fall prey to that type of gouging, but in many cases it really bogs down the whole system because a lack of proper representation makes it more difficult for claims to travel through the system. It delays hearings because incompetent paralegals cause delays in the process. So it not only gouges the injured workers; it mucks up the workers' compensation system and in fact causes problems both for the WSIB and for the Workplace Safety and Insurance Appeals Tribunal. If you speak to people who do the hearings, who hear the hearings, in both those bodies, they'll tell you that it's an ongoing and ever-increasing problem because you're getting more and more incompetent representatives, both on the employer and on the worker side, because the Office of the Worker Adviser and Office of the Employer Adviser are not properly funded.

Mr. Kormos: OPSEU knows that the issue of regulation of paralegals has been around for a long, long time. The Cory report, the most recent report, by a very distinguished jurist who comes from the legal community, the lawyer community, recommended self-regulation, and also in his report set out scope of practice. Do you have any idea why the government would not have adopted even part of the Cory recommendations?

Mr. Grimaldi: I think it's really an abdication of responsibility. The Attorney General, in bringing forward this legislation, is really abdicating his own responsibility. It seems to me that it's typical of the type of legislation that's coming out of his office, whether it's with the Human Rights Commission, where he wants to privatize and force people to go to the courts, or whether

it's in this regulation, where he's contracting it out to the law society to regulate rather than either developing a regulatory body or allowing the members of the Legislative Assembly, who should have more say in this type of legislation. It's just a complete abdication of responsibility.

Mr. Kormos: Thank you kindly.

The Chair: The government side.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Gentlemen, thank you very much for your presentation. I wouldn't want to be left out in extending best wishes to President Casselman. She's a constituent of mine, actually, and I know her quite well. So do give her my regards.

Mr. Grimaldi: We certainly will.

Mr. McMeekin: I found your presentation to be clear, focused, consistent with what we've heard from others, and in that regard quite helpful. So I just want to say thanks for coming out and sharing your thoughts with us this morning.

Mr. Grimaldi: Thank you.

The Chair: Mr. Runciman.

Mr. Runciman: You can extend my greetings to Ms. Casselman as well. Remind her that she still owes me a libation for some assistance I provided a number of years ago.

Mr. Grimaldi: I will certainly do that.

Interjection: Fee for service.

Mr. Runciman: Fee for service, yes.

Thank you very much. I don't disagree with a lot of what you've said here today. One of the problems, of course, that we've heard, not just from your organization, is with respect to the scope of this legislation impacting on areas that I don't think were contemplated by anyone looking at the specific area of paralegals. We're hearing from the real estate industry, from the banking industry and others who seem to be falling within this, and there are no guarantees being provided by government members, when these concerns are raised during committee or in the Legislature, that this isn't going to happen: "We're going to ensure through amendments at the end of the day very clearly that this is only going to be focused specifically on the one area providing legal services, paralegals," and clearly define what a paralegal is.

One of the things we've heard through testimony and leading up to the committee hearings is the fact that the paralegal community was not consulted. People who are being impacted by the wording of this legislation were not consulted. I'm just wondering if your organization was asked for any input during the drafting process.

Mr. Grimaldi: We were not consulted at all with regard to the drafting of this piece of legislation. In fact, we have had the opportunity to meet with the Attorney General on two separate occasions, and neither time was this issue raised.

Mr. Runciman: Well, that's unfortunate. I've mentioned earlier in the proceedings that there are judicial fingerprints all over this legislation, and not just dealing with this specific area. Everything but the kitchen sink

has been thrown into this legislation, which is again regrettable. Both Mr. Kormos and I raised this. I think all parties agree that regulation of paralegals is the appropriate way to go. It's just the way they've approached this: without consultation and by throwing a number of other complex issues into the mix. We understand that there's some urgency to this and we share that feeling, but the challenges are many and certainly your perspective has been helpful. Thank you very much.

Mr. Grimaldi: Thank you.

The Chair: Thank you, gentlemen, for your presentation.

The next presentation's from R.H. Associates. They are not here yet, so we're going to recess for about five minutes and see where they are. Thank you.

The committee recessed from 1129 to 1148.

The Chair: The committee is called back to order. As you folks may know, the 11:30 witness is not here and it's approaching 12 o'clock, so I think that it will only be in order if we recess now until 1 p.m. What's the wish of the committee? Are we all agreed? We will meet back here at 1 p.m. then.

The committee recessed from 1149 to 1305.

PERSUADER COURT AGENTS INC.

The Chair: This committee is called back to order. Good afternoon, everybody. Our first presentation this afternoon is from Mr. Gerald Grupp of Persuader Court Agents Inc.

Mr. Gerald Grupp: It's a little difficult to get around with a cane.

The Chair: That's fine. Take your time.

Mr. Grupp: Thank you, Mr. Chair, members of the committee. I understand you have copies of my submission, which includes three attachments. They'll be referred to in my submission. I'm just going to read it.

On preparing this document, I asked myself whether I should even bother to appear or spend time on this presentation when certain colleagues of mine have insisted that this bill is a done deal, the government was mind-set to pass the bill and invoke party solidarity to push it through to proclamation, regardless of the efforts made against it. I was told by these colleagues that this effort would fall on deaf ears and that the document will be placed in the dead letter file, along with the Ianni and Cory reports and the efforts of the other presenters to this committee. However, Ms. Rivka La Belle, who appeared before you on September 5 and whom I assisted in the preparation of her submissions, pointed out that even in the face of an apparent lost cause, if no effort is made, then we deserve the fate that we're dealt, so at least we fought.

So this is an effort to reach those on the committee who have reservations on the passage of this bill in its present form but who feel bound by their party solidarity not to follow their conscience. If they do that, they will certainly feel personal and private pangs of guilt when the bill is passed and the result is a miserable failure,

resulting in many legal challenges to the statute, and the public of Ontario further suffering when paralegals are beaten into the ground and having no reasonably priced representation in courts and tribunals, no assistance in preparation of paperwork for incorporations, simple wills, powers of attorney, uncontested divorces and other things—for most of which there are already kits that you can buy in Business Depot and Grand and Toy—to help fill out those forms. Those kits could also be deemed to be the practice of law themselves and therefore unlawful.

As reported in the Toronto Star on August 13, 2006, Chief Justice Beverley McLachlin of the Supreme Court of Canada stated, "With the cost of going to court moving beyond the reach of the average Canadian, access to the justice system is an 'ideal' for most people but not a reality." I've attached that report of that speech as an attachment to my address, and I know that it's part of your package. Chief Justice McLachlin did not advocate for paralegals in her address but only rued the state of the justice system where the disadvantaged are, for lack of funds, not able to access assistance in their plight before the courts, and they suffer for it. In fact, the courts suffer for it because people appearing unrepresented usually pose problems for access to justice. The province of Ontario has the opportunity to ameliorate this situation.

The government is doing the correct thing in bringing regulation to the paralegal industry. The problem is that all paralegal groups, at least in this issue, are united that the basis of this regulation is to lump the paralegals in with the lawyers and have them regulated by the Law Society of Upper Canada.

1310

On the face of it, it seems a good and efficient idea: having all legal services regulated by the same regulator. The problem is, Bill 14 suffers from ignoring history. Historically, lawyers and paralegals have been, and still are, enemies. Lawyers have always treated paralegals as illegal upstarts and competitors.

Brian Lawrie was the first to make inroads in the POINTTS decision, which confirmed the right of paid agents to represent persons in those areas where statutes allowed agents to appear. I might say that statutes have allowed agents to appear for quite some time, but the POINTTS decision made it clear that it wasn't just your grandmother, your mother or your father who could appear as an agent; it could be somebody who was getting paid to do it, and that was the significance of that decision. Lawyers have never accepted this reality and have fought for their turf ever since. The Law Society of Upper Canada, which is proposed to be the regulator of all legal services, is not and cannot be an impartial regulator.

The law society has always been the regulator of only lawyers, and that has been for a few hundred years. But it is more than that; it is the advocate for lawyers and always has been. Its corporate structure is unique. It is governed by a large number of member lawyers called benchers. Its uniqueness has evolved over a long history and, therefore, is different from the normal run of

regulators. Its evolution has derived from and continues in its guiding purpose to protect its members, who are the lawyers.

Into this cauldron it is now proposed to drop paralegals. Independent paralegals—that is, paralegals who operate without the need to be employed by lawyers—are a phenomenon less than 20 years old. Paralegals are proposed by Bill 14 to be second-class citizens in this cauldron. They will not have membership in the law society. They will have no say in the operation of their regulator, will be powerless in the makeup of the rules under which they will be regulated and will be at the mercy of the benchers.

There has been no group that has been regulated in this fashion. Midwives and dental technicians, for example—and there are many other examples, such as immigration consultants and people who operate under FSCO—have been granted status of self-regulation, independent from the more powerful group above them, such as doctors and dentists. Those self-regulations have been successful.

Only paralegals have been proposed to be placed, powerless, in the hands of the lawyers, who, as is plainly evident, look upon them as competitors and upstarts who need to be reined in and tightly controlled. The law society is prepared to and will do so if this bill is passed. This will only lead to impairment in the access to justice even more than now exists.

It is certain that there have been paralegal scoundrels. There are also such scoundrels in all professions, either through incompetence, errors of judgment or just plain evil intent. Regulation is designed to control them.

Lawyers have stated that paralegals have a lack of legal training. Regulation is designed to ensure that this is corrected and to recognize that there are grandparents who have demonstrated competence who should be recognized immediately for that competence and allowed to continue to practise.

One must simply look at the provisions of the bill in an overview. The bill mainly deals with provisions that are designed to protect the turf of lawyers from inroads by paralegals who are their competition. The bill outlaws non-advocacy paralegals. These paralegals have been able to provide assistance at reasonable rates to the public who cannot afford lawyers when dealing with simple incorporations, wills, uncontested divorces and many other simple matters which don't really require expensive legal advice. The law society has allowed kits to be sold on the market which give legal advice in their use, but the bill allows the law society the right to ban non-advocacy paralegals in actually assisting the public in the use of these kits, and that's an incongruity. Possibly the law society will be bringing Business Depot and Grand and Toy to court if they continue to sell these kits after this bill is passed. Even the people who publish these kits might be brought to court for that reason.

The bill makes it clear that advocacy paralegals stay in their place and does not provide for paralegals to be given permission to appear in Superior Court—and I

actually meant Divisional Court, which is a branch of Superior Court—on appeals from Small Claims Court decisions and tribunals decisions. That's the avenue of appeal. This denies access to justice for those who cannot afford lawyers and cannot even rely on those paralegals who represented them at the original hearings to represent them on the appeals. In most cases, this means that the public either must appear in court on their own or abandon their appeal rights if they can't afford to hire a lawyer.

To take an appeal to Divisional Court through most lawyers is going to cost anywhere from \$3,000 to \$5,000. When you're taking into account that Small Claims Court and most of the tribunals deal in matters under \$10,000, the cost of such appeals is beyond belief, and there have been many of my clients who wanted to appeal and couldn't appeal because they couldn't afford the cost of a lawyer. There are many of my clients who won their case in the tribunals or in Small Claims Court who, when the decision was appealed, couldn't afford to hire a lawyer to prosecute their response to the appeal in Divisional Court.

Paralegals ask only that they be given a level playing field. This bill does not achieve that purpose. It puts paralegals unfairly in the hands of those who do not have respect for them and who intend to squeeze paralegals to eliminate their competition. These statements may not seem politically correct, but they reflect the actual feelings of paralegals towards this bill and must be said. I'm sure you have listened to many paralegals over the last number of hearings of this committee, and these things have all been said.

The next part of my speech says, "Who Am I?" I have a bachelor of laws from Osgoode Hall Law School in 1968 and a masters degree in law, also from Osgoode Hall Law School, in 1978. I have taught law at Sheridan College in the court agent and tribunal program for the last five years. I've taught contracts, torts, administrative law, legal research and writing, advocacy debtor/creditor law and Small Claims Court law. I've taught high school law at Ner Israel Yeshiva for the past 13 years. I practised as a solicitor from 1968 until 1993, and I have practised as a paralegal since 1993 to the present.

I can confidently state that I have a good reputation in all the courts and tribunals in which I've appeared, which takes in the area from Whitby to Milton in the west and from Toronto to Newmarket in the north. I've appeared in the Tax Court of Canada under the summary jurisdiction in more than 30 trials, and have been granted permission under rule 15.01(2) of the Rules of Civil Procedure to appear in the Ontario Superior Court of Justice on more than five occasions. I believe I have an excellent reputation in all of these venues. I've also been a member of the board of directors of the Paralegal Society of Canada for the past seven years.

On the unfortunate side—and I'm not hiding this; I'm taking it right up front—I was one of those persons who made a serious error in judgment, resulting in my disbarment from the law society and a short sentence, ending in

June 1993. I paid the price for my errors, and I believe I have atoned for this over the last 13 years. I believe that if this bill is passed, I will be made to further pay by the law society beyond what the law has set for me. This is as the result of the so-called "good character" clause in the legislation. I believe the law society will punish me by refusing me grandparent status for a licence through this clause, ending my ability to earn a living. At 64 years of age, faced with having to challenge the law society in court without capacity to practise and earn money, my prospects are very low.

To give an example, I point out to you the case of Sébastien Brousseau. That's what the other attachments to my submission are. The case itself is in French because it hasn't been translated into English, but I have a translation of what I consider to be the important parts of the case, which was done by one of my Sheridan College law students, who's a native of Quebec. So you don't have to rely on it, but as this Legislature is supposed to be bilingual, I would presume that, if you want to read the case, there will be translation provided to you.

Mr. Brousseau was convicted of involuntary manslaughter of his mother and served almost four years in prison. After his sentence was served, he successfully attended law school and applied to be admitted to the practice of law. After five unsuccessful attempts to be accepted to the practice due to the Quebec equivalent of the "good character" clause, his case came before the Tribunal des professions. The tribunal took into account his good character, which he'd demonstrated since leaving prison, and ordered him to be accepted to the practice of law.

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One can only wonder why it would take five attempts by Mr. Brousseau to attain what clearly he deserved, and what the reasons were for the five refusals. At some point, a person must be seen to have served his sentence and be recognized for the merits demonstrated after his sentence was served.

At age 64, having successfully practised as a paralegal for 13 years and depending upon the practice to earn a living in my declining years, it may be no wonder why I have an apprehension about what the law society has in store for me. There are at least seven other persons of whom I am aware who are paralegals in the same position. They also have been successful and outstanding paralegals since their troubles and will face the same problem as I.

For this reason, I ask that the "good character" clause in the legislation be amended to require the law society to take into account the factors and actions of each applicant for grandparenting or for regular licence that have been demonstrated since any unfortunate occurrence in their lives. If this is not done, I expect there will be more Brousseaus in the near future.

In summary, I ask that this committee recommend the amendments to the bill which are being asked of you by me and many other submitters. Perhaps this committee should recommend that there be a step back and a new

overview look at the whole matter of access to justice, so that this bill will not become known as the access to injustice act. I thank you for your attention.

The Chair: Thank you. We'll start with the government side: about five minutes each. Mrs. Van Bommel?

Mrs. Van Bommel: Thank you for your presentation. Certainly the last part of your presentation was very interesting. It brings to mind the idea that when we talk about—you're talking about the whole issue of good character and grandfathering and that sort of thing. But in terms of the public perception of the profession of paralegal, what kind of image do you think it would convey to the public if disbarred lawyers were to become paralegals? Do you have any concerns about what that would do in terms of the general perception, public perception, of the profession?

Mr. Grupp: I'm going to tell you that I've been practising since 1993 as a paralegal. I have never hidden my past from any of my clients. They know what my past is. That has not deterred them. Secondly, if you do have a chance to read either in French or in English the Brousseau case, that position was addressed by the Tribunal des professions and they have taken the position that it is not going to be something the public will concern itself with, if the person has acquitted himself properly after his unfortunate occurrences, and that a person is allowed to make a mistake.

I'm sure that no one in this room—I'm not saying they made big mistakes, but no one in this room can ever say they never made a mistake in their lives. No one in this room, I hope, has not been forgiven for that mistake or paid for it and then been forgiven. That person's talents should not be thrown into the garbage if the person can prove himself or herself to be a proper, upstanding citizen and has performed in a proper and conscientious and legal manner in the past.

So something that happened to me 13 years ago is unfortunate; it really is. I paid my price for it, but I still have the talents that I have and I can still use them and have used them for the past 13 years to assist the public. Sure, I charge for it, but I don't overcharge, and I've done a lot of good for a lot of members of the public. I don't think that when I was disbarred or when I was given a sentence that they told me the sentence was going to be for the rest of my life. That's what basically happens. It's a form of discrimination. It's probably legal discrimination. If you read the Human Rights Code and you read the Constitution, there's nothing that prevents people from being discriminated against on this basis, but why shouldn't their talents be put to good use? Why shouldn't my talents be put to good use? They have been put to good use for 13 years. They still are; I'm still in practice. I still appear in trials, in tribunals, in tax court regularly. When I leave here today, in two days I've got a trial in tax court and then I've got another trial in small claims—I'm a very busy practitioner. Why should I be discriminated against, and how do you think the public is going to be ill-served by me using my talents for people who can't afford lawyers?

I hope I answered your question. I probably overdid it.

The Chair: Thank you. Mr. Runciman?

Mr. Runciman: Thank you for being here. I'm all for people having the opportunity to turn their lives around. I guess I'm curious, though. I don't know the gravity of the situation with respect to your own disbarment, but I am curious about how you would personally view any regulatory body with respect to reaching a conclusion about good character. How do you arrive at that kind of decision? It strikes me that it would be over some period of time.

I'm looking at your submission. You were disbarred in 1993 and then immediately went into practice as a paralegal, so a brief period of unemployment there. I really am curious about the fact that I don't think any regulatory body would have an opportunity—I think you would want to look at some sort of record of how they approach their responsibilities in life over a period of time: five or 10 years, whatever it might be.

I find it a bit of a contradiction in the sense that you support regulation and you support a sort of reasonableness in terms of an approach to that issue of good character, but at the same time you moved almost immediately—from your presentation—from disbarment to paralegal practice. Do you think that's the sort of thing that should occur?

Mr. Grupp: Well, first of all, I agree with you. I think there should be a "good character" clause. I just think that the "good character" clause should require the law society to look into your record since your problem and until the time you make the application. In my case, it's 13 years. I know that I will get recommendations from many judges and lawyers I have been dealing with over the last 13 years, and one judge—I'm not going to name names—has even told me, "You shouldn't worry about it; they have to take this into account," etc. What concerns me is that the legislation doesn't require the law society to take that into account. It just leaves it up in the air.

Mr. Runciman: That wasn't my point. My point was your view of regulation as an appropriate, fair assessment of good character. In your personal situation, you went from disbarment—immediately, almost—into practice. How would you see that sort of situation under regulation—

Mr. Grupp: It wouldn't happen.

Mr. Runciman: That's right. There has to be a period of assessment.

Mr. Grupp: That's right. The regulator—and I propose it shouldn't be the law society, but if it is—should take into account, even if you get out of jail or have just been disbarred last week and you're applying for a licence as a paralegal, your actions and what efforts you've made to ameliorate yourself and the rest of it. Really, if you were disbarred last week and you're applying this week, I don't think it's going to be a slam dunk that they're going to give it to you; you're going to have to have some period of being able to show that you have

atoned for your sins, so to speak, and that you've done something worthwhile to atone for your sins.

Now, obviously, if a lawyer gets disbarred this week, maybe he has to go to work for some organization or maybe some lawyer or maybe some other place to be able to show his good intentions. That's what Brousseau did; Brousseau did that. After he was released from prison he went to law school for three years, and it took him seven, eight or 10 years—I can't remember exactly from the case, but you can read it—before he was starting to make these applications. But when he started to make the applications in what passes for the Law Society of Upper Canada in Quebec, it just took the attitude, "I don't care what this guy's done; throw him out. I don't want to see him."

That's why I'm asking that the words "required to consider these things" be added in, so that it's clear from legislation that the law society has direction from the statute that they have to require, because if you don't, they won't.

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The Chair: Mr. Kormos?

Mr. Kormos: Thank you, sir, for an interesting contribution. I suppose your comments for me are striking because they're in contrast with the recent publicly reported deliberation by the law society when a complaint was made about the character of a woman who sought her call to the bar. That situation, which appears to have been agreed upon by everybody, was a pretty damning one, and in that instance, the appropriate group at the law society, contrary to the expectations I suggest of a whole lot of the members of the public, felt that the circumstances were such and enough time had transpired since the misconduct that she could be called to the bar.

I suppose one of the things that might be helpful is if Ms. Drent—sorry. Ms. Drent has been producing research papers for us at an incredible pace, and I thank her—could get from the law society whatever examples there are of how the law society applies the "good character" provision—I say that very colloquially—in existence now, other than the case recently reported about the woman who sought a call to the bar. For the life of me, I can't recall ever reading about circumstances wherein anybody was denied the bar here in Ontario. There could well be. I don't know.

Mr. Grupp: Her husband went to law school with me and I know her.

Mr. Kormos: All right. So if Ms. Drent could get us that, because I've got some of the same problems Mr. Runciman does. I used to practise law, and down where I come from in small-town Ontario, when a lawyer is disbarred, everybody knows about it. As a very young lawyer, I've got to tell you, the sense of betrayal by a senior lawyer—and some of the disbarred lawyers I know were brilliant lawyers, which made their misconduct all the less comprehensible. But as a young lawyer working very hard and wanting to develop standards and ethics that were amongst the best, the sense of betrayal by a senior lawyer, especially a good one, was

profound. So I suppose that competence to me means not just knowing the nuts and bolts of lawyering but also being trustworthy.

Mr. Grupp: I agree with you 100%. What I'm saying to you, Mr. Kormos, is that people make mistakes. They make big ones, huge ones.

Mr. Kormos: Sure they do. In the course of my legal career, I represented a whole lot of them.

Mr. Grupp: Well, does that mean they have to take themselves to Dr. Kevorkian and end things or does it mean that at some point they can rehabilitate themselves? Even the federal legislation on criminals is called the Corrections and Conditional Release Act. People are expected to be corrected, and people can correct themselves. Yes, there may have been a huge sense of betrayal to you as a young lawyer by whoever it was you're referring to, and I don't blame you for feeling that way, but do you still feel that way today? Has this person still not proven themselves to be—I don't know.

Mr. Kormos: One of the persons is a wonderful paralegal. One of my concerns from the get-go in terms of the regulation of paralegals is, will the paralegal profession be a back door for disbarred lawyers to continue to practise?

I agree with you about the potential for rehabilitation. That's why I want to find out what the law society does now in terms of the standards they apply, whether they do look at periods of time after the misconduct and after the court-imposed penalty. But we've also got Ms. Drent looking at what it means to be an officer of the court, because we've got a group of paralegals here who want an amendment to the legislation to ensure that not only barristers and solicitors but also paralegals are officers of the court. Then, if Ms. Drent would address the issue of good character in the context of officers of the court—because it seems to me there's probably some connection there. I don't know what you have to say about that.

Mr. Grupp: I haven't researched the law regarding officers of the court—maybe Ms. Drent has or hasn't—but when you look at people practising before tribunals or before Small Claims Court and even the summary jurisdiction at the Tax Court of Canada, even though you don't have the official title of officer of the court, you are in fact expected to act in the same way as an officer of the court would. You are expected to talk to the judge in a truthful manner; you are expected to not present tainted evidence; you are expected to act in a proper way. You may not be called an officer of the court, but the judges and the tribunals expect you to act that way. Even in the Tax Court of Canada—these are federal judges—they expect you to act that way too. I have appeared before many federal judges in the tax court and have been told, "You're an officer of the court," and I've said, "Well, I'm not really," but I understand the significance of it and I act in that fashion.

I've won some significant cases in the Tax Court of Canada to do with employment issues, specifically that the employment insurance people did not recognize the fact that a corporate employer was different than a per-

sonal employer. I won that case in tax court and the government appealed it to the Federal Court of Appeal. They had to get a lawyer to go there and the first thing he said before the crown lawyer stood up was, "What don't you understand about corporate 101?" It's a different person. If a person says he wasn't related to his employer, and the employer was a corporation, he's not related to his employer. They had to change all of the employment insurance applications across Canada. I'm just tooting my own horn, but that was a significant victory.

The Chair: Thank you.

Mr. Grupp: I'm sorry. I'm getting out of my time, I guess.

Mr. Kormos: Thank you very much, Mr. Grupp. I'm not sure this bill is a done deal. The parliamentary assistant has stopped coming to the committee hearings, so the government appears to have abandoned the bill.

The Chair: Thank you very much, Mr. Grupp, for your presentation.

PATRICK AND ASSOCIATES LEGAL SERVICES

The Chair: The next presentation is from Patrick and Associates Legal Services, Mr. Shane Clair.

Mr. Shane Clair: I'm not a former lawyer, but I like the fact that we have former lawyers working as paralegals. I think they've helped professionalize us.

My name is Shane Clair and I'm a paralegal from Belleville. I got into being a paralegal because I was a property manager. I had to terminate some tenancies in 1990. I went to a lawyer to ask for some help, and the lawyer quoted an outrageous price for this work. So I went to the sheriff—at that time we still had a sheriff in Hastings county—to find out what it was that I had to do in order to do the proper procedures. Back then, we were still operating under the Landlord and Tenant Act, and our last recourse was to go to the Ontario Court (General Division) at that time, where the justices were loath to see people bringing landlord and tenant matters before them, believe me. They would yell at us. So I went to the sheriff and he told me what the procedure was, he showed me what the paperwork was, and I proceeded to do that.

A little while later, a year after that, I met a fellow who owned an Ontario paralegal franchise in the Belleville area. He was a former OPP officer and he was kind of ambivalent about the work. I said, "Well, I'm interested in doing it," and arranged through the Canada manpower program at that time to get a training allowance. I did training through his office with Ontario paralegal. In that context, in my submission, the one entitled Submission to the Standing Committee, I was able to attend various seminars and took courses and had much discussion, and I kept my head down when the various paralegal organizations were warring about who's going to say what about what, but always there was this consistency: that we should have professional standards, that we would like to be regulated, and who

better to regulate us than ourselves? That question has never been answered. How can we regulate ourselves?

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I'm going to start at the end. The way that we can regulate ourselves, simply put, is it's more cost-effective. If you as the government want to make a bill that is going to cost the citizens of Ontario—I think the term is “the body politic”—tens of millions of dollars in an exercise to potentially increase by a slight increment the access of the public to justice and to legal services, then that's a grave mistake. It's a bad political decision. If I come to you and I say, “We can do the same thing and we can do it better. We'll do it faster, and we can do it more effectively in a shorter time for a lot less money,” that's called cost-benefit. Business wants to see that. That's what I've come to determine here.

I'm not going to talk a lot about my submission, because it's in writing there. I've been doing this now for 15 years. I've done everything from landlord-tenant to family law, I do a lot of the non-advocacy paperwork, simple wills, uncontested divorces. I do that stuff. I don't solicit that business. People come and say, “Can you do this?” and I say, “Well, here's the reality. If you want this done, I can't give you legal advice. If there's anything that you people haven't discussed or if I think that there's any decision that you might have made here that really you should be talking to a lawyer about,” I tell them that. I recommend, I refer people to lawyers.

As a matter of fact, at one point I had the nasty habit, if I came upon two warring factions, of sending them to two lawyers in the Belleville area who hated each other on a personal level, because if you're going to have an adversarial divorce, then have an adversarial divorce. But divorce shouldn't be adversarial. It's one of the things that this access to justice isn't addressing at all: that the destruction of the family in a divorce proceeding is furthered by this adversarial concept. Every person in this room who has been trained as a lawyer was trained in adversarial law. That is unfortunate, because philosophically and from the point of view of what you understand to be the practice of law, this is a problem. It's a problem for the citizens. It's a problem for the consumers of legal services, because they don't want to fight about a lot of this stuff; they just want to get it done. There are a lot of people in Ontario—and in other jurisdictions, but we're talking about Ontario—who won't use lawyers because they don't want to fight. That's the simple truth of it.

So here we're saying, “Okay, we're going to set the LSUC up and further entrench them.” I'm going to start with this question, because this is the stuff that concerns me, and maybe I need answers. It's not just rhetorical. Why should the Law Society of Upper Canada have a monopoly on access to legal services in Ontario? You don't have to answer it now. Why should they? Why? The Law Society of Upper Canada is a self-policing body that oversees Ontario's 36,000 practising lawyers. Is it conceivable that maybe we might have enough lawyers, that there are other services and tasks that are being

provided? It's possible. How good a job does the LSUC do?

Well, I can tell you that a number of years ago there was a complaint made by the president of the Hastings County Law Association to the LSUC, and this is what it was about: The Yellow Pages sell listings; they sell advertising. As a bonus, if you buy a certain number of listings in smaller non-urban areas like this, they'll put you into categories for no extra cost. What they've done, for years, for paralegals—before we had our own heading in the Yellow Pages—is to put us in under “lawyers.” That's where the Yellow Pages placed us. We didn't want to be there. Finally, now, there are enough paralegals so we have our own listing in the Yellow Pages, and that's kind of interesting, too. That's in the last 12 years.

There was a complaint made. The LSUC called me up and said, “You can't advertise in the Yellow Pages under ‘lawyers.’” I said, “You know what? I don't care. I don't really even want to be there, because I'm not a lawyer. I provide services that aren't—but if you want to take that up with the Yellow Pages, you be my guest.”

My listing hasn't changed. None of the paralegals who are listed under the “lawyers” has changed. Evidently, the LSUC, who knew they could push around one little paralegal from Belleville, wasn't interested in trying to push around Bell Canada, because it's too big a target and there's just too much at risk there. We didn't hear any more about it.

How good a job does the LSUC do? We don't know. We, as the citizens of Ontario, don't know how good a job they do regulating lawyers. We don't know. There is no transparency. Who is the LSUC accountable to? It's accountable to itself. Evidently it's accountable to the Legislature of Ontario, and of course to the courts—it has some accountability there in isolated cases dealing with particular matters, but as a whole, it doesn't have any transparency.

The LSUC is only now—and I refer you to last week's *Globe and Mail*—instituting a program of active inspectors, inspecting lawyers, aimed at curbing fraud and incompetence and of curing negligent lawyers of bad work habits.

Now, the LSUC says, “Yes, we're the ones who can regulate and manage paralegals,” but on the other hand, they evidently haven't been doing such a good job managing and regulating themselves. All the lawyers in the room, I'm sure, think, “Where does this guy get off?” I'm old enough. I can do other stuff, you know.

This gets me. This really disturbs me. You were talking about good character. By the way, just as a matter of information: I haven't had a drink in 18 years. I deal with people regularly—I'm talking about lawyers—who have serious lifestyle difficulties. The law profession does not protect itself by saying, “We have people who are having some lifestyle difficulties.”

In industry there are programs. Maybe the LSUC has something like that—I don't know—but what I'm saying is that there are enough hazards out there for private

business people, which is essentially what lawyers are. They're private people. They're running businesses. Most of the lawyers in Ontario operate in firms of 10 or less. That's the reality. They're not all working for the big, huge firms out of Bay Street. I don't know how many people here are from there. It has serious problems, I believe, and though this is anecdotal, I believe it could be demonstrated.

There are serious difficulties in managing the affairs of lawyers who are having difficulties in Ontario, because lawyers are like police. They form this—I don't know what the lawyers call the equivalent of the Blue Line. I don't know what it is, but there should be some recognition that lawyering is a tough, tough game. Practising and formerly practising lawyers—no. It is a very, very tough business. It's not for the faint of heart. It's basically a profession that at the litigation front is "march or die." It's a real tough business, it's extremely stressful, and it takes really tough, strong-minded people to practise law and be lawyers, even in non-adversarial situations. I know that. I've learned that from dealing with lawyers. That's what happens.

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So let's talk a little bit, though, about non-lawyers. In Ontario, there are somewhere between 1,000 and 1,500 independent paralegals, depending on how you define us now. We're not all members of any particular organization because, frankly, we finally have a cause to be unified, and it has caused us to become more unified. As a result, we've been able to have some benefits achieved. So there has been this give-and-take. Some people think that it's too late for us to be a unified front, but it's not too late, because if we are legislated into subservient existence under some law that says you have a monopoly to deliver these rights, then we're going to have some serious challenges under the charter in Canada. There will be some challenges.

We work in arenas where lawyers in private practice are often disinclined to venture: landlord-tenant; uncontested divorces; some of the other tribunals that are available for us to represent people in. Certainly in workers' compensation, there are a few paralegal firms that have specialized in that for years. That's one area that this Access to Justice Act is supposed to be addressing, and you know what? Paralegal participation in working on appeals and working on applications before the Workplace Safety and Insurance Board has improved the delivery of services, and it has made it more viable for lawyers to become involved in that. So there again is this relationship that has happened.

There are many more. We do, of course, Small Claims Court and document preparation. I'm trying to think of all the stuff that I've done: Canada pension appeals. Private insurance companies love talking to paralegals. At least, I've always had a good response from them, and they've always been very responsive. We stay out of litigious situations because I'm not interested in billing hours; I'm interested in resolution. Probably if I was more adept at business, I would be more interested in

billing hours. I could learn from a couple of the law firms in Belleville about billing hours, because they've shown me how billing centres work within their firms. They've demonstrated: "This is how you do this." So it's a business practice.

Who are the non-lawyers practising legal services? You've heard all of this, so I'm just running over the same old area. Paralegals: You know that term. A lot of people in the public know paralegals today. Law clerks: Generally, law clerks work for lawyers, judges, sometimes faculties of law. Legal assistants: Is that another title for a paralegal? Is that an assistant to a lawyer? What is that? There are a lot of people who have that designation. Lots of schools run programs for legal assistants. Other terms for us are "non-lawyers," "community legal workers," "advocates working for legal clinics" and, of course, there are the biggest employers of non-lawyers providing legal services. The single biggest employers are law firms, government and private business. It does not mean that they regulate us. It doesn't mean that they have any type of standard. It just means that they're the biggest consumers. So when the government says to me, "We, the law society, mandate our members to consume the legal services provided by these individuals, but we say that you, the general public, the body politic, can't have the same access to legal services," I'm having a real problem with that.

Is that democratic? I don't think so. Is it good business practice? Absolutely not. It's not good business practice because, as I mentioned to you with the WSIB, good business practice there has made that work a little more efficiently, and with some of the issues that are addressed in the Access to Justice Act, we're probably going to see an improvement there. We're probably going to see an improvement in the practice of poverty law. Instead of appeals taking years and years for somebody to be granted an ODSP pension, now it'll be done in months because this process will be speeded up, God willing, under the legislation.

However, I say this: The Family Court rules were changed in 1999 to improve the delivery of services to the consumers of those services—not lawyers, but to the people there.

Do you know what happens in Belleville? If you have something in Family Court, you sit there for endless days.

We've been fortunate in Belleville because there isn't the Unified Family Court, so there has been this division of interests. Luckily, we had lawyers who were justices who were specialists in family law and child protection law. We were very fortunate. Consequently, the judges we had were extremely learned. The lawyers cleaned up their act for a while.

Now what we've seen is the slowing down of the process again. I was granted leave by the court to act on behalf of individuals until an application was brought by the president of the Hastings Law Association against another paralegal to have paralegals banned. We asked the court for leave to represent. The senior justice at that

time, the late Justice Pickett, said, "I don't want to have to deal with this anymore. I'm just barring all paralegals from Family Court." I had sat with Justice Pickett a number of times and said, "I don't care if I can come here because I don't even like coming here. I don't like coming here, but what I can do for people is help them prepare their paperwork very efficiently because if duty counsel is helping them prepare their paperwork, it's rushed, it's written out, it's 10 or 15 minutes." That's the duty counsels who are being paid under the legal aid plan. I can help people. I charge them a modest amount of money and then if they want to use duty counsel and direct them what to do, then that's what they should do.

Too often lawyers are reluctant to take direction for their clients. A lot of clients, especially in family law matters, have a pretty good idea: "I want to have some parenting time. I'm prepared to pay some support. This is how much I can afford. I'm sorry that we have all this awful, nasty hostility between the adults, but let's get on with the real issues here, which are always about parenting." Guess what? The Department of Justice Canada is addressing this right now in their changes to the Divorce Act.

The other non-lawyers—let me see. Property management companies, insurance companies and real estate companies all use non-lawyers to do legal work. Non-lawyers include title searchers: the backbone of the real estate conveyancing business. Real estate firms use secretaries to prepare offers of purchase and sale, legal contracts. They use them. So there's the secretary writing up this contract that represents a huge amount of money. I would say that the fabric of legal services in Ontario is dependent on non-lawyers.

A comparable institution would be the medical industry. Doctors look after their own. Nurses look after their own. Other medical technicians look after their own.

The LSUC has a monopoly. In this day and age, monopolistic control over services provided to the body politic is really a bad, bad decision.

Do independent paralegals need to be regulated? Yes, we do. Good character, insurance, proper training: We need all these things. We need this stuff. But we can do it as a group. We can do it cheaper, more efficiently and faster. We could get the regulations in place. We could get the qualifications. We could have standards in place and get people certified a lot faster than the law society. We are small enough in numbers. We can learn from the mistakes of other professions. We can institute a regulatory and certification process in months for relatively low cost. The PSO has said this repeatedly. If it falls on deaf ears, I'm sorry, but I can say this: the LSUC says that it will take years and millions and millions of dollars to institute the same regulations and certification programs. That's not in the best interest of any consumer of legal services.

1400

One of the things that I handed out was this discussion paper. It's an academic discussion paper, Paralegals: In

the Community's Interest? I just quote briefly from some of the information in it. I've been reading so much about paralegals and, from an academic point of view, it's fascinating. There's a huge plethora of considerations that have been done in all kinds of jurisdictions around the world in dealing with this issue.

This is a quote from the paper: "In 1985, the British Parliament ... removed the monopoly that solicitors had over conveyancing." This resulted in more reasonable costs, helped speed up the process, and the competition seems to have improved the overall standards of the practice of real estate conveyancing. The recommendations of the conveyancing committee: the establishment of a governing council for licensed conveyancers; required education, skills and experience standards; mandatory insurance; and a code of conduct. It has now been implemented and the independent conveyancers are now operating. That's since 1987 in England. They did that. They said, "Here's an area where we can have competition."

There's an article here about Bob Aziz, who challenged the lawyers because he felt that they were charging too much for doing real estate work. He forced them, when he was with the bank, to bring down the cost of the legal services that lawyers did; more consistency. So now, if somebody comes to me and says, "Can you do real estate?" I say, "There are some really good lawyers in town here. Their prices are very competitive with one another. They can offer you title insurance, they can offer you protection at a much higher rate," and then I'll give people the names of a couple of lawyers—sole practitioners, by the way. I don't expect these people to send me business, but the individuals I talk to about that stuff, it's in their best interests to do that. It's not in my best interest. If I was just a greedy, manipulating guy, there would be some way that I could grab a little bit more money out of it. That's not the real reason that we do this. It's not the only reason. We're not just in it for the money.

Common complaints of consumers of legal services provided by lawyers: the number one complaint—lack of information. There's no communication. Is the LSUC going to force their membership to communicate better with their clients? Why on earth would they? And how could they? Lawyers are busy people. You usually have to get through two or three desks before you get to your lawyer, unless they're a sole practitioner. Sole practitioners, certainly in our area, are pretty forthright. But people, time and again, say to me, "You know, I had this thing with my lawyer. He never told me what was going on. She never said where we were at and I hated that. I'm paying them good money. I hated not knowing. So I don't want to use that type of service again." I say, "I'm going to tell you everything that I'm doing because I need you to make decisions all along the way. I need you, the consumer of this legal service, to make decisions. I need to be able to inform you."

Insensitivity on the part of lawyers: It kind of goes with this non-communication issue. Many people in-

volved in the process of separation and divorce work out agreements without lawyers because they do not want to get involved in adversarial procedures, and lawyers in Ontario practise adversarial law. That's it. If you're going to make access to justice a more profound statement to the needs of the citizens of Ontario, then do that. Force adversarial law right out of family law, even to the point of having the courts challenge. If there's going to be an adversary, let it come from the bench.

Here's a couple now: They've been married for 20 or 25 years. They've raised their kids. They've come to the decision that their marriage is over. They don't need anybody to tell them. They're perfectly comfortable with this. They have worked out an arrangement, a division of all their assets. They've worked out how they're going to be parents. They've discussed things like what happens at family events. And if they haven't discussed this stuff, if they're talking to me, I ask them those questions: "What are you going to do when your kids get married? What are you going to do when your grandchild goes to get baptised? Are you people prepared to deal with that right now? Can you tell me how you're going to deal with that? Because I want to know. I want to know what you're going to do in five years. I don't want to know if this is convenient; I want to know that you've dealt with some of the hard issues."

People like those discussions. They like to have dialogue about that stuff. That's the way I do it; I don't know how other people do it. But if you're a lawyer and you've told somebody that's come to you and said, "Listen, we both want you to prepare our separation agreement," and the lawyer says, "No, I can't. One of you needs to get a lawyer"—so now you've got two lawyers representing the best interests of the parties. But the best interests of the parties include their families, maybe their friends. The lawyers have no interest in any of that; they only have interests there. If a party says, "Look, I don't want this to be a fight. I want this agreement to be done," very few lawyers will do it; very few lawyers will do a separation agreement for two people. Yet the separation agreements I did are written by some of the best lawyers. The ones that I use are thoughtful, thorough documents that reflect the legal needs and also discuss the social needs.

I see in separation agreements today from lawyers no discussion about when the cost of child support ends. I see no discussion about alternative dispute resolution. They don't put that stuff in there. Well, why don't they? It makes perfect sense to me. If people are this far along in discussing how they're going to deal with their problems, let's give them a vehicle that's mandatory. Make it mandatory for lawyers to put in when you pay child support until. Make it mandatory in this Access to Justice Act when your support ends. Make it mandatory that instead of having to go to court every time you have a difference, there's an alternative dispute resolution process. The Arbitration Act is supposed to deal with that.

This is a quote from the paper by Ms. Noone: "It is unlikely that the role of paralegals can be fully

developed" as independent operators until dominance of lawyers in the legal services field is altered.

The Chair: Mr. Clair, you have about a minute left, just so you can wind up, finish up your presentation.

Mr. Clair: My spiel?

The Chair: Whatever you want to call it. There's about a minute left, if you'd like to just—

Mr. Clair: The final question that Ms. Noone addresses in her discussion is, what levels of expertise and training are needed to perform legal tasks? What level? Is it the academics that are supposed to tell us? Is it lawyers—lawyers who rely on the support network to get them to the point where they can practise law effectively? Most lawyers I know are pretty smart people. They're very effective. They're very caring people; they're not insensitive people. They're not people who can't communicate. But the perception that they're suffering from is that they can't deal with their clients because their hands are tied in certain ways. My hands aren't tied that way. I can deal with people on that human level.

What type of training is needed to perform legal tasks? Are they already performed by a variety of legal workers? Yes, they are. Anybody going anywhere, you'll find that. Why don't we develop legal professions linked to levels of legal need? Instead of just this carte blanche saying that the LSUC is the organization in the best position to handle this, I suggest that it's in the best position to handle the regulation of lawyers. The regulation of legal services is best left to those people that are providing it, and if they don't do a good job, then that's the responsibility of our elected representatives.

The Chair: Thank you very much.

Mr. Clair: I'm done? No questions?

The Chair: That's it. There's no time for questions. At 30 minutes, you used up all the time.

LAWRENCE ARKILANDER

The Chair: Next we have Lawrence Arkilander via teleconference. Do we have Mr. Arkilander on the phone?

Mr. Lawrence Arkilander: Mr. Arkilander is here.

The Chair: Hi, there. It's Vic Dhillon, the Chair of the committee. I believe you have 20 minutes. You may begin your presentation.

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Mr. Arkilander: Thank you very much, Mr. Dhillon. Honourable committee members, my name is Lawrence Arkilander. I operate in Belleville. I've been a Small Claims Court agent for just over 10 years in full-time practice, unlike some part-timers that we have in our field. I've made a substantial investment in this field, starting with a two-year program at Seneca College in one of the community college's first-ever court and tribunal agent programs. I also studied commercial law with them and took a civil procedures course at Ryerson University.

I agree that our profession would benefit from regulation, and I actually encourage it. It will provide us with

recognition that I think we lack at this time. But it's wrong to say we're completely unregulated. There are several ways that we are regulated currently. One of them is through the Ministry of Consumer and Business Services, which will investigate practices of any business that a consumer files a complaint about. If it warrants, the police will even get involved, if there's fraud or something involved in that.

Secondly, the rules in Small Claims Court also provide for the judges to exclude any person who they feel is not competent or is not aware of the duties or responsibilities of an agent in Small Claims Court. In essence, we're tested every time we appear in a courtroom by the judges who are present. Now, you really couldn't ask for better scrutiny than that of our profession. But to be regulated by our competitors, which are the Law Society of Upper Canada, I have very serious concerns about.

Now, it's true that no one group represents paralegals. The major reason for that is because it's an emerging career—it's evolving, it's growing. It's sort of a new field. It has been around but it's being recognized now. It's undergoing growing pains, essentially. If I was going to belong to any one group, it would probably be the Paralegal Society of Ontario. Some of the reasons I feel the LSUC is not the right body to govern us are spelled out. I believe you have a copy of my e-mail in front of you. Number one, it's a conflict of interest. As the honourable MPP Ted Chudleigh is quoted in last Friday's Sun, it's like "putting Wal-Mart in charge of Zellers." I said that's not quite accurate. It's more of a David and Goliath situation. The LSUC oversees some 35,700 lawyers. It's true: It's a monstrous, bloated bureaucracy and I really have no desire to be a part of it or to be regulated by them.

Another problem is the underlying resentment by many lawyers towards agents. It's subtle, but it's certainly there. There's often a patronizing attitude. They sort of look down upon us as poor cousins or something, intellectually. Sometimes we're looked upon as wannabe lawyers, but that's not true. That's like seeing a nurse as a wannabe doctor or an architectural technologist as a wannabe architect or a veterinary technician as a wannabe veterinarian; they're not. I love my profession. I'm proud of it and I have absolutely no desire to be a lawyer. I've had people ask me, "Why don't you go through and become a full-fledged lawyer?" It's a saturated field and, in some cases, I've earned as much money as or more than lawyers. I've been living in the same neighbourhoods. Seven years of schooling would probably not benefit me in a lot of ways.

Some of the other reasons—I'd also like to say that I've had lawyers outside of courtrooms, when they were on the other side of a matter, sort of look down upon me, saying that we're not regulated. My response is, I kind of laugh back at them and say, "Well, that would be like saying that issuing drivers' licences makes the roads safer." In addition, any Small Claims Court judge will tell you that some of the agents who appear before them are more competent than some of the lawyers. When I'm

trying to sell a customer on using my service, I'll say, "Who do you think is more competent in Small Claims Court: an agent who appears on a daily or weekly basis, or a lawyer who appears once a year, once every five years, once in a career?" And they say, "Well, it would have to be the guy who's there regularly." And I say, "That's exactly the point."

Regulation, as for all businesses, also comes in the form of a caveat emptor—it's buyer beware. Consumers will ask their friends and neighbours who they've used, see if they've used certain agents for Small Claims Court, and they'll recommend the good ones. If you've had a bad dealing with any business, whether it's a paralegal or not, chances are you'll never deal with them again. Bad agents don't last. That's a fact. I see them a few times and then within a year they've disappeared from our profession. They can't get repeat business. A lot of my business is repeat.

I'd also like to point out—you may have seen the annual Léger Marketing poll of professions that Canadians respect. You can go online and find it. It refers to professions that Canadians admire, respect and trust, and it shows that currently only 45% of Canadians admire lawyers. Unfortunately, I'm in the majority that do not. I wouldn't want to be regulated by the Law Society of Upper Canada.

Another thing in favour of paralegals is the lower-cost service to the public. I know first-hand of two cases taken to trial where the lawyers' fees were almost equal to the amount they were collecting or defending—you're looking at paragraph 6. In one case, a law office inadvertently sent me their client's account. They got a judgment for \$5,500 and had charged the Bank of Montreal over \$4,300. There's something definitely wrong with that.

In another case, when the lawyers argued for costs when they were almost successful at trial—we were suing for about \$5,700—the lawyers' account was over \$4,000.

I have customers come to me with accounts sometimes—I specialize in account collection—whether they want to sue for \$12,000, \$14,000, \$15,000, \$17,000, \$18,000, \$20,000 even, where I say, "If it's that amount, you may want to go to a lawyer." They just don't want to make the trip to a lawyer's office and be dealing with lawyers for collection of what should be a relatively simple matter. So what they do in Small Claims Court—the legal term is that they "abandon the excess," which means they knock it down from \$18,000 or \$15,000 down to \$10,000, so they don't have to seek the service of a lawyer, because they know that Small Claims Court is less expensive, and it's more expeditious, a faster result. We are their answer.

Another major argument against having the law society govern us is that they don't know what agents do. They're just not familiar enough with how our practices are operated. They don't do the work of an agent, and we don't do the work of a lawyer; we are not the same profession.

In closing, I would like to say that if we must be regulated, we ask to be self-regulated, like all other professions. Regulation by the LSUC could result in restrictions being placed on our areas of practice with an intent to limit competition, and because of that, those are my serious concerns about being regulated by the LSUC.

Any particular questions?

The Chair: Thank you very much. We'll start with Mr. Kormos. Four minutes each.

Mr. Kormos: Thank you, Mr. Arkilander. This is being broadcast on the legislative channel, so what's the name of your company?

Mr. Arkilander: I operate under the name of L.A. Legal Services.

Mr. Kormos: L.A. Legal Services. That's in Belleville?

Mr. Arkilander: That's correct.

Mr. Kormos: And you have an office location?

Mr. Arkilander: Yes, I work from a home office.

Mr. Kormos: Okay. Do you invite people to your home?

Mr. Arkilander: Yes, I do.

Mr. Kormos: By appointment only?

Mr. Arkilander: That's correct.

Mr. Kormos: Okay. What's your phone number?

Mr. Arkilander: It's 613-962-6999.

Mr. Kormos: Thank you kindly. I appreciate your contribution. One of the interesting things is that we haven't heard yet from paralegals who accept the government's proposal of regulation by the Law Society of Upper Canada. A very credible group of paralegals was here last week, my colleagues on committee will recall. Their final comment was, "regulation of paralegals by anybody but the Law Society of Upper Canada."

Are there paralegals who support the proposal contained in Bill 14?

Mr. Arkilander: Not that I have met yet.

Mr. Kormos: You, of course, are endorsing regulation.

Mr. Arkilander: That's correct. I would welcome it.

Mr. Kormos: And why haven't paralegals developed a more united self-regulatory scheme to date?

Mr. Arkilander: That's a very good question. I believe I spelled it out. It's sort of an emerging career at this point in time, and I don't believe it's reached maturity to the point that—

Mr. Kormos: Mr. Grupp's going to start getting his old age pension next year. He's been doing this for 14 years.

Mr. Arkilander: Was that Mr. Grupp who spoke before me?

Mr. Kormos: Yes.

Mr. Arkilander: Oh, yes. I thought I might have recognized his voice.

Mr. Kormos: Okay. But paralegals have been around for 15 or 20 years.

Mr. Arkilander: Yes, they have been, under different names, though. Some people think we're law clerks; some people think we're legal assistants. There has been

a struggle by a number of groups, each wanting to be the body to represent the agents, to represent paralegals, and no group has been successful in getting everybody on board yet.

Mr. Kormos: What about the educational standard? Are you a graduate of the Seneca College program?

Mr. Arkilander: That's right—court and tribunal agent.

Mr. Kormos: What do you advocate in terms of minimum educational standards?

Mr. Arkilander: I would suggest that probably a minimum of a year would be adequate. In the two-year program, we had a few of what I would call filler courses. They would just sort of round out—

Mr. Kormos: Like what?

Mr. Arkilander: Well, we had to take immigration, and I've never touched that. We took something else in wills and estates. I haven't touched any of that. I specialize in Small Claims Court.

Mr. Kormos: Do you bill on an hourly fee or do you assess a block amount when you first sit down with a client?

Mr. Arkilander: I assess a block amount.

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Mr. Kormos: What are some of the types of fees that a person could expect to pay when they retain you?

Mr. Arkilander: I do a lot of collection work for businesses and I work on a contingency basis, which is a percentage of monies recovered.

Mr. Kormos: Fair enough.

Mr. Arkilander: I was sort of forced into that initially by my clients. They said, "Well, we'd like you to see if you can recover this debt, but we don't want to throw more good money after bad. Tell you what: If you're able to collect it, you can take a portion of it."

Mr. Kormos: Do you get paid for disbursements?

Mr. Arkilander: Yes, I do.

Mr. Kormos: Thank you kindly, Mr. Arkilander. That's L.A.?

Mr. Arkilander: L is the initial and the surname is—

Mr. Kormos: I know your last name, but the name of your firm again?

Mr. Arkilander: L.A. Legal Services.

Mr. Kormos: In Belleville, listed in the telephone under L for L.A.

Mr. Arkilander: Yes. It's in the Yellow Pages also.

Mr. Kormos: Under what listing in the Yellow Pages?

Mr. Arkilander: Under paralegals. L.A. are my initials, so that's what I use.

Mr. Kormos: Right, of course. Thank you kindly, sir.

The Chair: Thank you, Mr. Kormos. The government side. Any questions or comments?

Mr. McMeekin: Yes, thanks very much, A.L. or L.A. I appreciate your input. Something you said intrigued me. I think in response to Mr. Kormos you were saying that you really didn't know why the paralegals—these aren't your words; I don't want to put words in your mouth, but

it's what I picked out of them—hadn't gotten their act together.

Mr. Arkilander: Correct.

Mr. McMeekin: I wonder how you would feel, as I suspect may be the case—although obviously there will be a lot of amendments if this act goes forward—if maybe there was some provision for a period of time to pass, with some review mechanism there. Maybe there's a time down the road where those who think paralegals should be regulated—and there seems to be a fairly broad-based consensus to that effect—maybe there's a circumstance where the profession is in fact ready to be self-regulated. I don't know; I'm just talking off the top. What would you think of that, if we were to put some sort of time-review provision in the legislation?

Mr. Arkilander: Time review—you're talking about for self-regulation?

Mr. McMeekin: If the bill were to proceed, to review how the bill is working and whether there are some alternative mechanisms, as the paralegal profession that you characterized as being immature and developing had matured a bit.

Mr. Arkilander: And fragmented, I might add. You're saying, proceed with regulation under LSUC and review it down the road?

Mr. McMeekin: Yes.

Mr. Arkilander: I wouldn't recommend that at all. Once it's in place and rolling, status quo is just too easy to maintain.

Mr. McMeekin: Fair ball. I just thought I'd give it a shot. Thanks.

Mr. Runciman: I agree with the witness. It's setting up a regulatory structure, and then the potential of it being abandoned after, say, a five-year review is highly unlikely.

I want to add my thanks for your participation, Mr. Arkilander. One of the things you were mentioning in response to Mr. Kormos was the fragmentation of the profession, the fact that you think it made you vulnerable for what's taking place with respect to this legislation. It's regrettable that there wasn't a body that could have represented the profession perhaps more forcefully with respect to the time that led up to the development of this legislation. But in any event, we are where we are.

I gather that you have no difficulty with the idea of self-regulation. We've heard references to all sorts of other groups, like dental technicians and whoever, that the government of the day has found it appropriate to allow to self-regulate, for whatever reasons. That's a view that you would share?

Mr. Arkilander: Yes, it is; absolutely.

Mr. Runciman: You mentioned in here some of your own experiences with the law society. Is a lot of what you're talking about here anecdotal or have you had some personal experiences that caused you to be cautious—to be polite—with respect to them having greater influence over your day-to-day operations?

Mr. Arkilander: Are you referring to any specific paragraph in my document?

Mr. Runciman: You're talking about the David and Goliath element and the resentment toward agents in the sense that you talk about the LSUC being a bloated bureaucracy. Do you have anything to support those views?

Mr. Arkilander: To buttress that?

Mr. Runciman: Yes, right.

Mr. Arkilander: Yes, I do. I've been patronized by lawyers, because we're in adversarial roles. Ninety-nine per cent of the time I'm representing the plaintiff; they're representing the defendant. I'd say a third of them are respectful to our profession; about two-thirds are sort of patronizing or look down upon us.

When I've been treated roughly by a lawyer, the odd time I've written to the law society and you get a form letter back. Essentially, if you're not a paying client of the lawyer, they won't entertain your complaint. That has been my direct experience. As a result, I've stopped complaining to the law society about any lawyer I've dealt with.

Mr. Runciman: How would you define a paralegal in terms of scope of practice?

Mr. Arkilander: That's a good question. A lot of people—half the population—wouldn't know what a paralegal is until I start to explain to them. Some paralegals do traffic tickets; some are doing uncontested divorces; some like me do nothing but Small Claims Court. The definition would be an independent practitioner of a minor area of law. I guess that's the best thing I can come up with.

Mr. Runciman: I just wonder if that would not capture a lot of the other areas we are concerned about, like real estate, banking and so on. That's one of the difficulties here.

Mr. Arkilander: Yes, I guess it would.

Mr. Runciman: Okay. Thanks very much. I appreciate it.

The Chair: Thank you very much, Mr. Arkilander. Have a good afternoon.

CREDIT CONTROL CENTRAL

The Chair: The next presentation is from Janet Wigle-Vence. Welcome to the committee. You have 20 minutes. You can begin.

Ms. Janet Wigle-Vence: First of all, I'd like to thank the committee for the opportunity to speak to you today. I believe you have a copy of my speaker's notes, and in the interest of time I'm going to skip over some of the details in those notes and leave that to your perusal later.

My name is Janet Wigle-Vence and I'm the legal manager at Credit Control Central. In that role, I'm responsible for all Ontario Small Claims Court actions and I liaison with all the legal service providers we engage to represent our clients in various Ontario courts. Credit Control Central was founded in 1995 and is a full-service collection agency. It is one of the largest—if not the largest—agencies in Canada that specializes in commercial collections.

I'm here today because we're concerned about the implications of Bill 14, schedule C, regarding the regulation of paralegals and the potential impact this legislation will have on our clients. Specifically, we are interested in maintaining the access we have today to affordable and effective paralegals who represent our clients in the Ontario Small Claims Court.

I have reviewed a number of the studies, reports, submissions and debates on this subject and found repeated references in those to the horror stories of the poor quality of representation received by some members of the public from paralegals and the need to protect the public from unqualified persons who offer legal services.

We certainly do not disagree that the lack of formal regulation of paralegals is a cause for concern. However, we do feel that the legislation as it is currently drafted will not address the problem in a timely manner. We believe it will have significant and unnecessary cost implications, the net effect of which will be to limit rather than enhance access to justice for those in the most need of cost-effective representation, those who, through lack of financial resources, choose to represent themselves or rely on paralegals rather than lawyers to represent them in the Ontario Small Claims Court.

We don't feel that the discussions to date adequately present the professionalism of the majority of paralegals with whom we have dealt. That professionalism demonstrated in the absence of formal regulation is more representative and speaks more effectively to the general standards of paralegal practitioners in Ontario than a handful of horror stories.

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We believe that the best interests of the public will be served by self-regulation of the paralegal profession and that the Paralegal Society of Ontario is a logical body to be entrusted with this responsibility.

Let me provide you with a bit of context for some of these observations. First, I pondered on what "access to justice" really means to the public. In June of this year, I attended a seminar which focused on the changes to the rules of the Small Claims Court that were coming into effect on July 1. I was impressed by repeated references to the principle that the Small Claims Court is a people's court. Several of the presenting justices made reference in one form or another to the notion that Small Claims Court should be governed as much by the rule of common sense and the use of common language as it is by the rule of law. It's this reference to common sense and common language that I find very relevant to the current discussion and which helped form my personal definition of what "access to justice" should mean.

For our clients and for the public at large, there are some very pragmatic considerations implied in the term "access to justice": (1) Ease of access to legal remedies, meaning that the rules, forms and guidance documents are written in plain language, that the proceedings are conducted in plain language rather than legalese and that the application of common sense is used in interpreting the rule of law; (2) timely resolution of an action, which

includes prompt processing of documents and scheduling of court dates, the rapid movement of case files through the judicial process and limits on the use of stalling tactics that inhibit the progress of actions before the court; (3) effective representation, which means access to professionals who are qualified based on education and/or experience, accountable as defined by a code of conduct and covered by insurance, and vested in their clients' best interests; and lastly (4) affordable representation. Options for representation should include the right to self-representation, but certainly also access to cost-effective representation by a qualified paralegal.

Our firm has been representing our clients in Ontario Small Claims Court actions since its inception over 10 years ago. We find that the rules and forms of the Small Claims Court are sufficiently straightforward to allow us to prepare the required documents and manage our cases in-house. We're authorized by our clients to represent them in court, but with our current volume of files, this isn't feasible, and we therefore rely extremely heavily on paralegals to attend court proceedings on our clients' behalf.

In Ontario, the procedures of the Small Claims Court and the reasonable cost of paralegal services provide us with the opportunity to initiate legal action on our clients' behalf in matters that would otherwise be too costly to pursue. With cost in mind, on claims often as high as \$14,000, we recommend our clients proceed with legal action in Small Claims Court, because to proceed in Superior Court, we have to engage our lawyer, and despite the fact that his rates are very competitive, they are still significantly higher than those of the qualified paralegals we have been using. Therefore, the cost savings far outweigh the recovery opportunity that is forfeited by reducing the claim to the jurisdictional limit of \$10,000.

We believe our experiences are a microcosm of those of the public at large. In all cases, we're talking about persons or businesses that are seeking legal remedies to address an injustice they feel has been done to them. The challenges—the ability to obtain effective and cost-efficient representation—are the same, regardless of the nature of the injustice.

Specifically in the case of our clients, we're dealing with the failure of a party to pay for goods or services rendered. Many of our clients are individual professionals and small businesses. The economic implications of an unpaid account can be crippling to these clients and have an effect on their employees, suppliers and customer base. In this environment, legal action is only a viable option if it presents a cost-effective opportunity for securing payment of the debt. In Ontario today, we have this option available to us through the Small Claims Court and the reasonable cost of services provided by paralegals.

If I turn for a moment to what I spoke of as the cornerstone principles of access to justice, the first two—ease of access and timely resolution—have, to a large degree, been addressed in the Ontario Small Claims

Court. Changes that were implemented on July 1 were intended to further improve accessibility and timely resolution of matters. While there are some growing pains associated with those changes, we believe they will further these goals and the issues will sort themselves out over time. The current discussion is therefore more specifically focused on the matters of effective representation and affordable representation.

Our experience for the most part has been that the paralegals we have engaged in small claims courts are educated in the matters of law that apply to the proceedings of civil matters, well versed in the rules and procedures of the Small Claims Court and very competent and highly successful at court proceedings. In short, our agents have helped us serve our clients' interests well, have a very high success rate, often against lawyers, and they have provided these services at reasonable prices, which a lawyer cannot match.

We've followed some simple guidelines to help ensure we engage professionals with appropriate qualifications at reasonable prices. These principles are not much different than those that any educated consumer would use in seeking a supplier of a professional service, be that an accountant, an architect, a real estate agent or any number of the other self-regulated professionals in the province of Ontario. We rarely engage lawyers to represent our clients in Small Claims Court. To do so is simply not cost-effective. Our experience with lawyers has therefore been limited to those who are acting on behalf of the opposing litigant. We have discovered that many lawyers do not understand the operation of the Small Claims Court, and several have admitted to us that they do not have the time or the inclination to familiarize themselves with the rules and procedures of the Small Claims Court. They often seem to have difficulty translating legal rhetoric into plain language and common sense. While they're very effective at filing motions that may delay the proceedings of an action, they have ultimately not been successful in court appearances where they are up against our paralegal agents.

There are, in your written copy, two examples that I'm going to skip over at this time, but the point of these examples is simply that the representation by a lawyer does not in any way guarantee a litigant that they will receive effective counsel. In fact, if you measure effectiveness based on results, paralegals acting for our clients have been far more successful and effective than lawyers representing the opposing litigants.

On the subject of regulation of paralegals, we have a number of concerns with the proposed legislation. First, we do not believe the legislation, as it is drafted, serves the best interests of the public, for a number of reasons. By placing the regulation of paralegals within the scope of the Law Society Act, the legislation confuses rather than clarifies the public's understanding of the difference between lawyers and non-lawyer professionals providing legal services. The bill does not actually define the scope of practice, qualifications, governance or rules for regulation of paralegals, but rather it defers these critical deci-

sions to the law society. It casts a broad net that has created confusion rather than clarified the public's understanding of which professionals and which services it is intended to regulate, as has been evidenced by the large number of regulatory bodies that have addressed or are scheduled to address this committee, and by the position in earlier hearings given by the law society representative that these are matters for further investigation.

Therefore, in the short term, the legislation does nothing to address the protection of the public interest or improve access to justice, and we can reasonably expect that it will take months, or perhaps even years, before a clear definition of the scope and executable rules for governance are ready for implementation.

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Second, notwithstanding the law society's good intentions in responding to the Attorney General's request, we do not believe that the regulation of the paralegal profession by the Law Society of Upper Canada is in the best interests of the public.

(1) The majority of the members of the law society do not practise in the same forums as paralegals, such as the Small Claims Court, and are not as well acquainted with the workings of these forums as the paralegals are.

(2) These forums, while governed by the rule of law, forsake some of the formalities of the higher courts in favour of the use of plain language and common sense.

(3) The present cost of services from lawyers ranges from three to five times what paralegals charge for similar services in their areas of practice.

(4) The current proposal for the governing body is made up of less than 40% representation by practising paralegals, meaning that those professionals who have the most knowledge of the workings of these forums will have the smallest voice in their governance. We fail to understand how a governing body can adequately regulate that which it does not intimately understand.

Therefore, we believe there is a high likelihood that intervention by the law society in a regulatory role will lead to the paralegal profession becoming more lawyerly, meaning more rhetoric, less common sense and plain talk, and increased costs for the services of qualified paralegals.

Finally, the potential for conflict of interest, real or perceived, between the lawyers who are the current members of the law society and the paralegals they seek to regulate is not in the public's best interests.

Given that the two professions have very different cost structures, given that paralegals practise in forums where cost is a significant factor in the public's ability to retain professional assistance, and given that the cost of those services is likely to rise significantly if the profession is controlled by the law society, the public's access to effective representation at an affordable price is likely to be significantly reduced, if not totally eliminated, restricting access to justice for those very persons the legislation is intended to protect.

With regard to the argument that paralegals are not mature enough as a profession to be allowed to self-

regulate, the majority of the paralegals we deal with are members of the Paralegal Society of Ontario. While membership in that organization is voluntary, those who are approved to use the PSO designation have met the PSO's standards for education, experience, ethical behaviour and insurance, and those standards are consistent with the concepts of regulation of any body of professionals.

What we feel the PSO is lacking is the teeth that would be provided by legislation recognizing them as the official governing body of the profession, and the critical mass and funding that would come from requiring that any person representing themselves as a paralegal become a member of the PSO.

So in summary, we believe our clients and the public at large will be best served if the existing legislation is redrafted, eliminating the model of regulation by the law society and replacing it with a model of self-regulation of paralegal professionals, thereby providing access to educated, experienced and qualified representation at a rate structure that the public can actually afford.

Thank you for your time.

The Chair: Thank you very much. Roughly a minute for each side for questions, comments. We'll begin with Mr. Runciman.

Mr. Runciman: Thanks for the very comprehensive submission. I gather, as one of the largest users of paralegals through your company—I have to assume you were consulted by the government during the deliberations to develop this legislation.

Ms. Wigle-Vence: No, we were not.

Mr. Runciman: Who was consulted, I wonder? I wasn't here last week and I'm not sure if the Paralegal Society of Ontario appeared before the committee, but could you take just a brief moment to outline how large this organization is and a little bit about their function?

Ms. Wigle-Vence: I do not know what their total current membership is. I do know they are speaking later and I'm sure they'll be able to address that for you. But I do know that our experience with them has been very good and we basically look to them now for the source of the best paralegals. They've given us the best results and the best experiences.

Mr. Runciman: You're suggesting that might be a more appropriate vehicle for regulation?

Ms. Wigle-Vence: I know that all of their members have insurance, they have a code of ethics, they have standards and educational requirements to carry the designation. They have a student membership program and mentoring. I'm an architect by training, although I never actually became licensed, so I understand those concepts of how you develop professional skills and organize a profession so that it can be self-regulating, and they have the characteristics that I would be looking for.

The Chair: Thank you very much. Mr. Kormos.

Mr. Kormos: Thank you kindly. I know I had to step out, but I have read your material. I'm pretty sure I understand it. Thank you very much for your submission.

What are the issues here? I hear what you're saying. You're like the incredibly competent group that was here last week, the trio of paralegals, law clerks who said, "Regulate us, please, but not by the law society." "Anybody but," I believe was the language that they used. I'm quite eager to hear from paralegals who support the proposal in this bill, because you see, the problem is, you're going to live with the consequences of this legislation one way or another.

Ms. Wigle-Vence: We're a collection agency, but we are a big user of both paralegal and lawyer services, because we have many, many files that are being litigated.

Mr. Kormos: So you see, my concern is that the government can use this majority to pass this bill unamended. Even though there aren't any paralegals who support the proposition in it, paralegals will submit to that regulation. But regulation, unless you're in a Soviet sort of climate of hyper-control, depends upon the regulated people having some confidence, trust, buy-in into the regulation process, doesn't it?

Ms. Wigle-Vence: I absolutely agree with that, and I think it also depends on the public perceiving that regulation as having meaning. I also think it depends on some timeliness. Unfortunately, I feel that there's a little bit of a net cast out and a boiling of the ocean happening and, as somebody with quite a bit of business experience and consulting experience, I know that that can lead to a kind of endless spiral with nothing effective ever actually happening. That's my concern.

The Chair: Thank you very much. The government side—any questions, comments?

Mr. McMeekin: Just thanks. Incredibly detailed, thoughtful and thought-provoking. I really appreciate your presentation.

Ms. Wigle-Vence: I hope you will consider the thoughts.

Mr. McMeekin: I will indeed.

The Chair: Thank you very much for your presentation.

KERRY RAMIREZ

The Chair: The next presentation is from Kerry Ramirez. Is Kerry Ramirez here? Good afternoon.

Mr. Kerry Ramirez: Thank you. Good afternoon.

The Chair: You may begin.

Mr. Ramirez: Thank you. Mr. Chairman, the honourable members of the justice committee, my name is Kerry Ramirez and I'm a paralegal, but I appear before you as an individual.

It is a distinct privilege for someone like me to appear in front of this august body and I am grateful for this singular opportunity. It is at times like these that we, as immigrants, acknowledge and underline how fortunate we are to live in Ontario, which has endured the Family Compact rule in Upper Canada and its outrages, and pay tribute to those old Ontarians and their hard-fought battle for achievement of responsible, representative government. Our diverse society in Ontario must be vigilant to

maintain those hard-fought victories and thereby celebrate and refresh the eclectic nature of Ontario's personality.

It is no accident that Ontario has developed into a diverse community in which each person can find a place in the sun and speak their voice. Again, we must acknowledge and pay tribute to the old Ontario and the old Ontarians who laid the foundation for the opportunities other immigrants enjoy today.

As soon as the sponsor of Bill 14 appeared on the scene, he pronounced that he wanted to have paralegals under the control of the Law Society of Upper Canada, and he has not wavered since. Most independent paralegals tried to give voice to their concerns but it was not to be. Communication was blocked by some who have been referred to and characterized by Mr. Batchelor and bear remembering.

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To me, the entire process of getting here was uncertain and ill-advised since it appeared to be hopeless to resist. The minister had made up his mind, and to object was pointless, I was assured. But then I gained inspiration from Hurricane Carter, who, despite being wrongfully convicted, jailed and put in solitary confinement, said that the system sought to make him feel helpless. The only thing that kept him going was the mantra: "I am not helpless and I will not be made to feel helpless." It is for this reason I put my name forward to speak today.

I want you to know that many paralegals have expressed quite openly that they will not appear, because if the law society were to get what this bill offers, the price they will pay is going to be too great. I speak particularly of the women paralegals who assist other women by producing, quite inexpensively, papers for uncontested divorces and have done so for years, each and every document approved by a judge. It speaks to their competence. My heart moves out to those women.

I was apprehensive, if not fearful, of appearing here, as I said. To my surprise, I am not among strangers. The member Maria Van Bommel is from a farm, as is my wife. Bas Balkissoon is from the Caribbean and, despite the odds, if nothing else, was a catalyst in shedding light on the outrageous MFP issue in Toronto's city hall. Dr. Qaadri is probably the most articulate man in the House. The Chair, Mr. Vic Dhillon, is a Sikh. I have toured the Chudleigh farm and walked among the Malling rootstock of his orchard and enjoyed the fine apple pies made right there on the farm. Acknowledging Mr. Kormos and Mr. McMeekin, I have lived in Dunnville, which is not far from Welland, and now in Hamilton, not far from Ancaster. So I am a little relieved.

I admire the Attorney General for bringing the issue of unregulated paralegals to the House at long last. This omnibus bill, named the Access to Justice Act, is breathtaking in scope. It is designed to give power and authority to the Law Society of Upper Canada to supervise, restrict and control anyone offering legal services. It also includes the issue of appointment of justices of the peace and legislatively forces victims of medical mal-

practice to purchase annuities, a product sold exclusively by life insurance companies.

Despite the heavy opposition from paralegals and others to this legislation, from bankers to used car sales operations, the minister shows tremendous power by refusing to back down. He has hung on tenaciously with remarkable strength and single-minded purpose—all attributes I thought he sought to eliminate with the pit bull legislation. Maybe his legislation is not as effective as I had hoped. Maybe we are what we fear most.

I came to Canada in 1969. The Premier at that time was John Robarts. Mr. McMurtry, Bill Davis and, I believe, John Tory were in the background somewhere. Together with them, Mr. Robarts and his government created an environment of inclusion and can-do-ness. They opened up government and its institutions to all. Together with Mr. Trudeau, every immigrant felt included from the day they landed in Ontario.

At the feet of Mr. Parker, I was introduced to John Kenneth Galbraith, Saturday Night and Maclean's magazines. I read essays on the BNA Act and much of the act itself. I also learned about the Family Compact. According to the Canadian archives and library, the Family Compact refers to a small group of public servants who dominated the decision-making bodies of Upper Canada around 1830. This Family Compact came about through the desire of John Graves Simcoe, first Lieutenant Governor of Upper Canada, to create a local aristocracy by naming his friends to important political and judiciary positions. Based mainly in York, which is now Toronto, the members of the Family Compact were from Canadian high society with strong ties to the British Empire and who idealized British institutions.

From about 1830, the practice of this autocratic, corrupt, unelected, arrogant group and favoured authorities caused such discontent in the ordinary people in the Upper Canada population that some of the residents rose in armed rebellion in 1837. The rebellion was put down, but the insidiously corrupt form of government which was the Family Compact eventually gave way to representative government. This was Ontario's Magna Carta. The death of the Family Compact form of government changed the name of Upper Canada to Ontario.

One of the institutions in the time of Upper Canada's Family Compact rule and its special dispensation of privilege and class was the Law Society of Upper Canada and its mandate. This mandate has remained virtually unchanged and is the body in whose arms this legislation seeks to deliver all who offer legal services. Once thought dead, the Family Compact lives in Upper Canada's law society in its corridors of amber. If I were Dave Nichol, I would rename the bill Memories of Jurassic Park.

The living anachronism which is the law society has been the bane of the existence of both lawyers and anyone who has had to complain and run afoul of its laws, but the public is concerned about the high cost of lawyers. However, Upper Canada's law society has no desire or mandate to deal with the pertinent issue of

lawyers' fees. Unfortunately, this child of the Family Compact has not fallen far from the tree.

As a means to gain access to controlling its competition in this Bill 14, Upper Canada's law society offers special dispensations to favoured groups by sending out letters indicating, in part, "Not to worry; we will not enforce the enacted laws in this legislation against you." This includes agents at court. The law society has granted positions of prestige to those who side with them. Recall that this is the 21st century and this is 2006. Upper Canada's law society remains as a living relic of the terrible 18th and 19th centuries, and this legislation seeks to breathe further life into it and enhance its reach and power. I urge you to speak up in caucus and offer an alternative to this approach.

I had prepared a presentation which I was to deliver last week, but I was bumped, as you know, because of the alleged conflict of interest on the part of lawyers who sit on this committee. As a result, I was able to view some of the other submissions, and since they all stole my thunder, all that's left for me to deliver are maybe some sparks and the context in which we find ourselves.

Let's eliminate the paternalistic impulse of the Family Compact and allow paralegals to take responsibility for their system and actions. Let the ministry in charge of consumer affairs create legislation. Take this opportunity to change the Access to Justice Act to a means to maybe modernize the mandate of Upper Canada's law society and to reflect the diversity and meritorious nature of Ontario's new society.

I seek not to wag my fingers to members I named earlier, but simply to remind them not to suffer the fate of Colin Powell. You would recall the manipulative use of this most credible minority person by the old boys in Washington to advance an ill-conceived and flawed policy which has benefited the few at the expense of the many ordinary people and citizenry, and the loss of credibility of our dear neighbour, the United States, throughout the world. Today is of particular significance to those people.

It is oft said that the lawyer who has himself for a client is a fool. I say that a paralegal who does not have a lawyer to refer to is equally foolish. We need lawyers. Many of the world's greatest people were lawyers. Mahatma Gandhi and Nelson Mandela were lawyers. Of course, neither may have found employment with Tory Tory, but that's another question. Let us not forget that there were hundreds of lawyers in and out of government who worked tirelessly to jail both Mandela and the Mahatma.

The courts then held that paralegals were not to charge contingency fees but lawyers could, not because contingency fees are fundamentally wrong but that paralegals could not do it.

A great Canadian is Dr. McClure, former moderator of the United Church of Canada. He recognized and facilitated the training and funding of clinics for cataracts in India. He saw the talent of lay people and trained them to do cataract surgery, as it was not necessary for doctors

who were more broadly trained and specifically equipped for bigger and better things to do that type of surgery. The public was better for it, the newly trained technicians were better for it, and India was better for it, but the college of physicians and surgeons in India, which body would have to supervise them, did not supervise or discipline these workers.

The unspeakable logic and the rush to super-monopolization of legal services runs contrary to the movement in the wider society against this tide of decentralization, opening up of markets and deregulation of different types. Even Bell Canada has to face competition now.

It is my further submission that this legislation may run afoul of the Competition Act. Although we have been advised by the ministry that the judgment or opinion could not be given until the legislation is passed, I urge the opposition to use its resources to research this issue. In a recent bulletin, the Competition Bureau has indicated its ability and willingness to review the actions of provincial professional bodies.

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I therefore call upon the members of this committee to exercise their individual convictions to speak on the nature of what it means to live in a diverse society and the means to enhance its very best.

I respectfully ask that a moratorium be put on this bill and that the proposal that has been presented at various times and places by the Paralegal Society of Ontario and the Paralegal Society of Canada to form a comprehensive, complete and proper legislatively endorsed system of self-regulation—give them an opportunity to do it and give them a time frame to do it.

We ask that there be funding for legal counsel in the PSC to deal with issues; to stay all litigation on non-advocacy paralegals; and to define in the public's economic and legal interest the scope of work allowed. Any proceedings which the public can do can be assisted with a paralegal.

I thank you for allowing me to speak. My presentation is more prosaic than I had first intended, but there have been so many good submissions and such strong positions taken by paralegals and really credible offers made that I thought we should be able to put something together for the general public.

I also had first requested that public hearings be truly public and have maybe a public marketplace, a town hall, to have the public speak to the issue, maybe having it in different centres: Thunder Bay and North Bay and so on. Unfortunately, this is what we are restricted to.

Those are my concerns. Thank you.

The Chair: Thank you, Mr. Ramirez. A little less than three minutes each side, starting with Mr. Kormos.

Mr. Kormos: Thank you, Mr. Ramirez. I appreciate your participation. This committee, I should let you know, had a memorable three days doing the circuit of London, Ottawa and Thunder Bay. We talked to people to people in each of those communities, and what we did learn, I've got to tell you, is that the huge north of Ontario, all of the north—I identify it in ridings, Kenora—

Rainy River all the way through to Timmins-James Bay—is serviced by one aboriginal legal aid clinic, with a handful of staff and volunteers.

You've given me an opportunity to remind my colleagues that one of the things we were urged to do—and I'm not talking in the context of this bill, because we were dealing with Bill 107—was to make ourselves, the justice committee, available to those very remote aboriginal communities. Quite frankly, access to justice for so many Ontarians is not even in the mindset; it's not even in the realm of possibilities. The bill is about regulating paralegals, not about access to justice.

You should take some comfort in the fact that the government appears to be losing some steam around the bill. You'll notice that the parliamentary assistant has lost interest and is not here today. It's remarkable, because for the 18 years I've been here, the PA stewards the bill through a committee. That's usually a sign that the government has washed its hands of a particular bill when the PA even stops showing up.

As well, we haven't heard from a single paralegal yet who endorses the government's proposal to have the law society regulate paralegals. For the life of me, Chair, how can you have a regulatory scheme when you don't have a buy-in by the parties who are being regulated? Strange.

Mr. Ramirez: May I just comment on that?

Mr. Kormos: Of course.

Mr. Ramirez: I don't think the paralegals are against regulation. As a matter of fact, we are for regulation. It not only helps the public but it also protects us, because we have a framework which we could use. We have some legislation on which we could rely to defend ourselves against frivolous or otherwise unfair claims against us. So it is to the benefit of all.

Again, if it appears that the thing that drives us is concern for the consumers, then let the ministry necessary for formulating legislation for consumer protection be the house in which we should operate our business.

The Chair: Thank you. Government side? Ms. Van Bommel?

Mrs. Van Bommel: Thank you very much, and certainly I want to say thank you very much for coming back. I remember meeting you on the first day when we did end up having to postpone the afternoon, and I appreciate your taking the time to do this.

We just heard previously from a company that uses paralegal services. They talked about the Paralegal Society of Ontario, and you mentioned them as well, as well as the Paralegal Society of Canada. But I also know there were other paralegal associations, professional associations. How many are there in this province? Do you know?

Mr. Ramirez: Well, the two that really look at the interests of independent paralegals—and as you know, independent paralegals are basically small business men and probably not terribly different, except in training and capacity, than single-operated legal firms.

But there was a paralegal society; I believe it's called the PPSO. They have disbanded. They, we thought as

independent paralegals, had very little voice. It was dominated by agents of court, usually ex-policemen. And as a matter of fact, the leader of that now-disbanded company is a benchner in the law society. He is a favoured person, apparently. But the fact is that that branch no longer speaks and certainly has never spoken for independent paralegals. The person who's a benchner was never an independent paralegal. In my opinion, the only credible paralegal associations are the PSO, which is the Paralegal Society of Ontario, and the PSC, which is a federally incorporated paralegal association.

Again, I'm not even sure whether this legislation will necessarily meet or affect the operations of the PSC, but they have been there for a long time, and again, I don't believe there is any paralegal who would consciously do anything or be in a position to do anything to compromise the public's interest and the work that they do.

Mrs. Van Bommel: Is there any requirement on the part of paralegals to belong to an association, regardless of which one they pick?

Mr. Ramirez: Well, as you know, there's no legislation. That's why we're asking for it, because we believe that there's a lot of benefit to be derived when you have people of like mind and like experience imposing certain standards on everyone so that they will do well.

My rhetoric has caused me to lose focus on your basic question.

Mrs. Van Bommel: I'm just asking, is there a requirement on the part of paralegals to belong to an association? You mentioned I'm a farmer. As a farmer, there is a requirement to have a farm business registration, which requires that you at least sign with one of the farm organizations, of which there are also a number.

Mr. Ramirez: No, no. There's no requirement. However, if you are a member of the PSO, they require you to carry insurance. You must carry liability insurance; you must be prepared to be educated; you must be prepared to attend meetings. But the fundamental thing is that they have set up—and I don't have it here with me and I don't know whether you have seen it or not, but certainly there's a whole range of duties that the paralegal association, if not doing now, is prepared to do to make it possible, if you have a credible, self-regulating body, including things like education, requirements of committees that will assist paralegals who get into trouble and assist the public to also assist paralegals who get into trouble. So there are standards and there are requirements, but again we need the legislative credibility to be able to make it happen properly.

Mrs. Van Bommel: Thank you.

The Chair: Mr. Runciman.

Mr. Runciman: Mr. Ramirez, thank you very much for your submission and your appreciation of Canadian and Ontario history. That's the first time we've heard about the Family Compact at these hearings—very much appreciated. What's your background? What did you do before you got into this line of work?

Mr. Ramirez: Well, I was an insurance adjuster and I was also—actually, I have a degree in agriculture and

horticulture. As an insurance adjuster, it became apparent to me that many individuals were coming to insurance companies, getting their matters settled not in their best interests, but certainly I didn't think that the paralegals were either educated enough or properly endowed to do a proper job for the individuals.

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Mr. Runciman: Is your practice limited to that field?

Mr. Ramirez: Well, I'm no longer allowed to, because the legislation has made it impossible for a paralegal, for example, to assist somebody at FSCO unless you register with FSCO. Quite frankly, I resisted doing that because I thought there was something fundamentally wrong about forcing the public to either represent themselves or to go to a lawyer. Those were the only choices. So you either became a complete victim of the insurance companies and their settlements, or you had to hire a lawyer. By the way, the insurance companies, for the most part, would have lawyers representing them. That was one part of it, but the other part of it was that I simply moved into doing accident benefits, and then there was an administrative prevention of allowing claims to be settled within six months of the accident, even though it was in the benefit, and it was done specifically to starve paralegals out of that business. So it had a definite effect. I now confine myself, basically, to rental tribunals and Small Claims Court, but certainly, without the protection of legislation for paralegals, it is difficult to function in a manner and a form that makes you feel that everything is entirely above board.

The Chair: Mr. Ramirez, thank you very much.

PAUL DRAY

The Chair: The next presenter is Mr. Paul Dray. Good afternoon, sir.

Mr. Paul Dray: Good afternoon.

The Chair: You may begin.

Mr. Dray: I've never heard myself referred to as the favoured one before, but I'll speak to that a little bit later. The last speaker seemed to think I was the favoured one.

My name is Paul Dray. I am now a totally independent paralegal. I'd just like to give you a bit of background about myself, but just a plug as Mr. Kormos would say. My company is Paul Dray and Associates, so I speak personally, but I do have a company that does paralegal work.

Firstly, I'd like to thank the committee for the opportunity of being here. My background is, I was a police officer for 13½ years, and I left the police department and went with the municipality. That municipality was Brampton. In 1988, I went into legal services at the city. At that time, I was known as what was called a bylaw prosecutor, because basically, paralegal prosecutors weren't heard of at that time. I think only Toronto had some, and Brampton started it, and as a result, a number of municipalities since then have had them. Now it's just "prosecutor" and we do all the prosecutions. As a result of transfer of responsibility, as Mr. Runciman would

have it, his government, we now as municipalities took over the provincial offences and Highway Traffic Act, those types of prosecutions.

In 1995, as a prosecutor, I founded what was called the Prosecutors' Association of Ontario, and we have in that association—I'm the past president—over 350 corporate-end members that do prosecutions right across Ontario, and basically two thirds are paralegals and a third are lawyers. So it's an association that involves both lawyers and paralegals. That's the other thing. I'm not going to come here and badmouth lawyers and I'm not going to badmouth paralegals, because there are good and there are bad in both professions, and I don't think this is the place to do that.

Just a little bit of history: In 2000, the Cory report was released, as you well know. That was a different government. In 2001, I was elected as president of what was called the PPAO, Professional Paralegal Association of Ontario. What we had in mind when that came about was to be the umbrella group for all paralegal associations. They could still be a member of the PSO, which I am, a member of the PSO, the Paralegal Society of Ontario, and that's where I get my insurance. I was there at the founding meeting of that in 1995 as well. At any rate, it was an umbrella group. At that time, our members were the PSO, OAPSOR, and later the PSC came, and they were all members of the Professional Paralegal Association. As a result of that, the law society set up a group called the legal organization group, and it involved the law society, the Advocates' Society, the metropolitan Toronto lawyers' association, the Ontario bar, and CDLPA, the County and District Law Presidents' Association. They set that group up. They then set up meetings with the Professional Paralegal Association of Ontario to develop a regulatory system for paralegals. As a result of that paper, which was released in 2002, it said the law society would be the regulating body. That group was chaired by Charles Harnick. Again, it was law society members and members from those organizations I've spoken of.

I'd just like to correct the apprehension that this PPAO was all agents in court. We had a cross-section of law clerks, government-employed—I was a prosecutor. I had my own business as well privately, so a portion of my work was done privately. So it had a cross, and some of the people on that committee, or on our board of directors—not some; the majority—were independent paralegals. Basically, that paper founded the basis for this legislation—not as it is, but the basis for that.

In 2003, I was appointed as a benchler of the Law Society of Upper Canada. If you can imagine, and I have a lot of paralegals sitting behind me here, all the paralegals believed I was in bed with the law society, and the law society didn't want me in the bed. So it was a bumpy road initially. I've been at the law society on standing committees, as this will be a standing committee. I've been on access to justice, finance, emerging issues, government relations, and the paralegal task force. Also, I'm a member of the appeal panel and we do

discipline hearings for lawyers at the law society, so I'm involved in that.

In 2005, I retired from the city of Brampton and became a full-time paralegal. Now my involvement is that I prosecute for 13 municipalities, a conservation authority, a health unit and the crown attorney's office on retainer letter.

I've given you my background. Now, do I support the bill or don't I? I speak in favour of Bill 14. I guess I'm the lone paralegal and I guess I've always been leading-edge, but there are a number of reasons for that.

First and foremost, it's time. It's time the industry was regulated, and that's for the protection of the public. Also, it will provide licensing, accreditation. It will have "good character" requirements and mandatory insurance to not only ensure protection of the public but ensure that there's a legitimate profession for paralegals. I'm old, I'm retired, but there are a whole bunch of kids—and when I say "kids," students and young people, maybe your sons or daughters—who are going into a profession, and there is no profession now. There is no accreditation; there's no licensing. We need it.

Secondly, education courses are now in place at a number of colleges for a court and tribunal agent. I was heavily involved in what's called an applied arts degree program at Humber College. It's a four-year degree program in paralegal studies. Somebody said, "Why would somebody take a four-year program in paralegal studies rather than go to law school?" About \$40,000: That's the reason. For four years at community college, it's approximately \$20,000. One year at law school is \$20,000. This is where a lot of kids—and it's been such a successful program. We had 400-some students and 60 places, and that's happened every year. It's a very popular course.

The other thing I'd like to mention is, as former president of the PPAO, I know from personal experience that without a strong regulatory body and appropriate regulation, you cannot regulate paralegals. It's been 20 years; we've tried everything. As an organization, the PPAO would send out a letter to somebody where we had a complaint. They just wouldn't respond; nobody would respond. I can give you another major example of that. As president of the PPAO, I believed what people were saying: that everyone was insured in these groups. It was not the truth. I found out, as a result, that there were less than 200 paralegals in the province of Ontario who have insurance. I can tell you: Insurance isn't expensive—in my terms. Mine taxes in as \$829 for \$1 million in all. I don't think that's expensive, but that's the reality of what's happening.

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With every bill there's always a problem, and I do have a problem with one area of this particular bill, and that is membership with regard to the law society. Section 5 on subsection 2(2) sets out who are members of the law society: the treasurer, benchers, barristers and solicitors.

The newly-regulated paralegals will pay dues to the law society; be regulated by the law society; be

disciplined, or their privilege to provide legal services be taken away—but they will not be members of the law society, and I am troubled with that. To exclude membership establishes a tone for future conflict and/or division. My theory is that you're either part of the problem or part of the solution.

I'm a member of other organizations. I'm a law clerk and I'm an associate member of the law clerks, and they have affiliate members; they have fellow members. When I was in the police department—they have civilian members of the association and they have police members.

I think it's correctable—it's not something that should stop the bill, but it's something I feel very strongly about. I've voiced my opinion at Convocation with regard to this and I voice it again today, that we almost become second-class citizens in this. I do support the law society, but I would like us to be members of the law society in some way—affiliate, associate or something like that.

Looking at the entire bill, there's a lot of mistrust on both sides. The lawyers think that, as a result of the way the bill's written, paralegals are going to be able to do everything. On the other side, we hear paralegals who are saying, "As a result of this bill, you're going to be able to do nothing." There's a lot of mistrust there.

My experience with the law society is that nobody likes the police, and the law society is the policing agent for lawyers. They go in and do audits at law offices; they are the ones who bring applications for discipline; they are the ones who suspend people who don't keep records. If we went and we had, "Are the lawyers in favour of the law society regulating them?" I would imagine you'd have just as many malcontents come and say, "It shouldn't be the law society. We should have another government body that's independent of the law society to regulate us." If we put the balance, it may be that both sides would have things to say about that.

There has to be a starting place. I believe the legislation is that starting place. It's leading-edge for both paralegals and lawyers. This will be the first jurisdiction in Canada and certainly in North America, I believe—I stand to be corrected on that—that allows independent paralegals or independent people, other than lawyers, to provide legal services to the public directly. This is leading-edge, and when you do that you are going to have bumps, you are going to have problems, and I think there is an infrastructure in place to deal with some of those problems, that being the law society.

Finally, I'd just like to say that the possibilities are endless here for both the government and for the citizens. It doesn't just provide protection; it also opens doors where—and we've heard and I believe that there's a real need for paralegals in family law. I really believe that, in my heart of hearts. This type of legislation opens doors so we can have legal aid. Legal aid is always in trouble with money, but paralegals can't provide legal aid services. Under this it may well be that this opens that door.

The possibilities are endless. It may not be the perfect bill, but it's a starting place. It's for the young people

who are coming out of schools. I think it should go ahead, and if there are minor amendments, so be it. But I believe that it is a good bill, and generally there is support from both the opposition parties on the regulation of paralegals. Who regulates them, I think, is the matter that's an issue.

Thank you, Mr. Chair, and I'm open for any questions.

The Chair: Thank you very much. We'll begin with Mr. Kormos. A couple of minutes each.

Mr. Kormos: Thank you, Mr. Dray. I appreciate your being here and your patience during the course of the day.

Let's find out how privileged you are. I'm told there is one heck of a wine cellar that the benchers have access to.

Mr. Dray: We do have good wine.

Mr. Kormos: Okay. I'm sorry to have to cast this stone myself, but you're damned privileged, Mr. Dray.

Mr. Dray: Thank you very much; yes.

Mr. Kormos: You talk about membership, and I think that's an important consideration and, if you will, a selling point, like the ads on television about credit cards—one of the benefits of.

The other thing, though, is the titles: "licensed to practise law" versus "licensed to provide legal services." We've heard a whole lot of good-meaning people comment about the need to eliminate confusion out there in the public. We created the college of social workers, if you will remember, about what these people can identify themselves as; there's got to be uniformity. I'm concerned that there are no titles in there. We know what a lawyer is; we know what a barrister and solicitor is, maybe; but "licensed to provide legal services"—we've got to have some significant identification of people who are paralegals versus lawyers, I believe.

What would you prefer? Should we be calling a spade a spade, so to speak, and call paralegals paralegals? That's what the public understands, I think.

Mr. Dray: Yes. At one point, when I was president, I thought, "Gee, maybe we can change the title," and the paralegals came down on me, and rightly so. They've worked hard to get this, as we've heard. It's now a designation in the Yellow Pages of Bell—"paralegal."

But the other thing is, if you look at the Law Society Act, previously, without these proposed amendments, nowhere do you see the word "lawyer." And you're a lawyer. The people know what a lawyer does. So that comes through education and through, I think, putting it out exactly what paralegals are allowed to do and what the limits of their licence are. That could be a limited-licence paralegal. The word "paralegal" is not in the legislation, but neither was the word "lawyer."

The Chair: Thank you. The government side. Ms. Van Bommel.

Mr. Kormos: I hope Niagara's wines are well represented in—

Mr. Dray: I understand. I'll make a note of that.

Mrs. Van Bommel: You brought up a number of interesting points, including education standards. You

talk about four years in a paralegal course at a community college versus—oh, my goodness—

Mr. Dray: A court and tribunal agent is the other course.

Mrs. Van Bommel: Thank you. Are you suggesting that those would be the appropriate standards? Because I've heard presentations from people who have had some formal education in paralegal as opposed to some who have actually more by experience and in a sort of self-made way become paralegals. Are you recommending a four-year course, or are you saying—are we suddenly going to move into a four-year regime on this?

Mr. Dray: I'm certainly not going to go against Humber College, where I sit on the advisory board, or Sheridan College, where I sit on the advisory board for the two-year. I think this will be an evolutionary process. I'm not recommending the four-year course, but eventually that may be the standard for paralegals; it may well be, in the future. Right now there's a two-year court and tribunal agent course that's offered. I think that is the standard that basically will be the essence of this legislation. I think that's acceptable.

The four-year applied arts allows students, then, to go on to law school if they choose. After that four years, if they choose to go on, they can. It also allows them work experience. So part of it is an articling. It's not called articling; it's called placement, but they actually go out into a paid law office as a paralegal to work. So that's the difference in the two programs. There's a placement in the college, but it's for up to four weeks, possibly six weeks in time, and it's not paid. That's the difference.

The Chair: Thank you. Mr. Runciman.

1530

Mr. Runciman: Thanks for your submission. You seem to be out on an iceberg by yourself here, with every other paralegal taking a different view of this.

I'm just curious. You mentioned Justice Cory's report, which recommends self-regulation. Then, if I have the chronology right, that's when the Professional Paralegal Association came into being. Is that the right—

Mr. Dray: No, it was after that. Cory was 2000. It wasn't until—I'm sorry, yes. My apologies. Cory; I'm thinking of Ianni. Yes, Cory.

Mr. Runciman: I'm assuming that part of the impetus behind the creation of that organization was moving towards self-regulation in response to Cory.

Mr. Dray: That's exactly what it was.

Mr. Runciman: And that was a failed exercise? Is that what has coloured your view of the world at this point in time?

Mr. Dray: Yes. I have a little bit of the background, and at that time, I believe your government was the government of the day. I think they were moving in the direction of the Cory report, and that died. It was basically to regroup and see if they could do it some other way that would be more acceptable to the government and to everybody involved in the process of providing legal services, and that's the direction we took it at the time.

Mr. Runciman: I'm just wondering: What kind of response did you get when you were involved in this organization? You fell apart for what reason or reasons?

Mr. Dray: When I was the president, I held it together. As a result of me being a benchner of the law society, I had a conflict at the time because I was the president of the Professional Paralegal Association, and the direction they wanted to go as a group was different than what—I was at the law society and I had a fiduciary duty to both the law society as a director and to the Professional Paralegal Association, being a director and the president. I felt I could be more effective being inside the tent than being on the outside. I chose to leave the Professional Paralegal Association. As a result, after that, there was infighting, a couple of things happened and then it imploded or exploded. You'd have to ask other people what happened.

The Chair: Thank you very much.

RON BOCSKEI

The Chair: Next up is Mr. Ron Bocskei. Is Mr. Bocskei here?

Mr. Ron Bocskei: I had asked the secretary for an additional 10 minutes to allow my secretary to speak, because her little report speaks volumes, as far as I'm concerned.

But introducing myself: Good afternoon, Mr. Chairman and members of the board. You're no longer a committee; you've been elevated. My name is Ron Bocskei, chair of the ethics committee for the former Hamilton paralegal association. Thank you for this opportunity to speak.

Previously, starting in 1974, for more than nine years I had been working as an employee for a union and then a company. I was deeply involved in grievances, negotiations and all the nuances thereof. After that nine-plus years of in-house training and practice, I started working for myself, entering the provincial court, civil division. Since 1982 I have studied and now handle more aspects of the law than I ever planned for. This year, 2006, I received a seal from the government allowing me to be a commissioner.

I do ask the question: Will I make mistakes? I'm never infallible. But I've also heard a remark—and I believe this came from the law society; I don't remember where—that any person just released from prison could hold themselves out to be a paralegal. That sounds like a viable idea, as such a person has had the time and the access to resource material that a paralegal normally does not. I have not heard, read, nor do I know of any persons in my profession who call themselves paralegals being sent to prison or even actually charged. Even though some lawyers have bilked a client out of tens of millions of dollars, they also have not been sent to prison or charged, although they are no longer allowed to practise law.

For example, the smallest amount that I'm aware of was 12 years ago in Hamilton—that was for, approxi-

mately, a \$2,000 case, and I don't have all the details on the one that exceeds \$70 million that occurred here in Toronto.

I've read lots of these letters. The Law Society of Upper Canada's standard letter involving concerns about lawyers simply reads, "Dear Mr."—or "Mrs."—"We are sorry we cannot deal with your complaint. We suggest you take this matter to Small Claims Court." That's virtually verbatim.

In reading some of the proposed amendments to the Courts of Justice Act, the Statutory Powers Procedure Act, and in particular the proposed amendments to the Small Claims Court, I find myself confined to the area in which I have time to speak, and that which concerns myself, the corporation and the employees thereof. Therefore, I have to address the regulation of, costs to and the education of paralegals.

With regards to regulations, should paralegals be regulated? The plain truth is yes.

The other question is: Who should regulate paralegals? Dr. Ianni, former dean of Osgoode Hall, had it correct when he stated that the Ministry of Government Services, as they're collectively now named, should be responsible, as they are the governing body of business. Lawyers have no God-given right to interfere with business, and should not be the regulators of paralegals. Simply put, don't put the fox in charge of the henhouse.

With regard to the cost and the prices: The insurance fund and the compensation fund—these monies will get passed along to the client. For example, with a simple will, registered for safekeeping, the price would be tripled.

In the public interest, this committee cannot ask, nor intend, that the client pay more for these other features. The reason most people come to a paralegal is because it's less expensive than going to a lawyer.

In family court, where no issues are in dispute, or in a matter of litigation regarding an amount so small it is worth either forgetting about justice—and we're talking about justice—or hiring a lawyer, what you have to keep in mind that there is a limit on how much the court will compensate you; that is, you could win your case and still lose money.

Additionally, quasi-judicial bodies are not without cost. The taxpayers of Ontario would have to guarantee a virtual carte blanche cheque.

With all of the facts on costs, whether hidden or shown, going to a paralegal is going to end up costing as much as going to a lawyer, and the taxpayer is going to have to pay for that right. This government will now be faced with a violation of the trades and competition act. I believe you've heard that mentioned.

A fact of life and of history is that the best type of education is hands-on, not theory: Leonardo da Vinci, when he cut up bodies; and Abraham Lincoln, when he was training to become President of the United States.

Ms. Spence, sitting to my left, now an executive secretary and in training, is one person enjoying that type of education. She's been to several courts including the

Divisional Court. I should have mentioned in here, and I didn't, that she does most of the landlord-tenant cases for our corporation.

We've never had a dispute with learning. We've contacted several credentialed schools. The course fees vary from \$892 to \$11,000. They've not on the list of schools possibly preferred.

1540

In the public interest, this committee cannot and should not recommend to the Legislative Assembly of Ontario the third and final reading and passage of Bill 14, the Access to Justice Act.

That we close our offices and cancel court dates would violate one of our codes of ethics. Any others in our profession would tell you that such action would also violate one, if not several, of their codes of ethics.

As far as human rights are concerned, as we are aware, the Humans Rights Code of Canada prevents anyone, including myself, from removing a person's means of income. The first person affected by that legislation would be me, Ron Bocskei, corporate administrator, paralegal and commissioner. Now, he would have a claim, if only there were a lawyer willing to go to the Supreme Court of Canada. The list goes on to directly affect three other persons. Each would have a claim, if only there were a lawyer willing to go to the Supreme Court of Canada.

To avoid violating the Human Rights Code, the Law Society of Upper Canada must step in to criminalize a person's right to be aided by an agent. Either the government is failing in its duties to uphold the rights of Canadians or it is willing to surrender to a type of dictatorship run by the Law Society of Upper Canada. To suggest to me, a paralegal before the pilot project on the use of paralegals got very far off the ground, that I disobey my own conscience—I'm sorry to say, members of the board, that I have a conscience, even if some politicians don't and some lawyers don't. I can't violate the morals instilled in me. To simply lay everyone off—"Who cares?"—lock the doors and go home is not something I can easily do.

Since entering my profession under the provincial court, civil division, the Honourable Roy McMurtry stated in the review of a pilot program which allowed persons to be represented by agents—that is, paralegals—that the "intention was to facilitate more speedy and less costly means of litigation" regarding small amounts of money.

There have been many changes since 1982; however, I have learned each change. I am a subscriber to a company that prints out and sends me annually the civil rules of practice, and I'm always in court, so it's with hands-on learning.

In reviewing past studies and statements, it appears that paralegals at one time were needed. Dr. Ianni stated that paralegals should be regulated by one of the existing bodies of government. Justice Cory also envisioned a scheme whereby paralegals could be regulated. To the best of my knowledge—and especially Dr. Ianni—

neither said the Law Society of Upper Canada should act as regulators.

The government of Ontario would be:

- facing a violation of the trades and competition act;
- advocating a violation of ethics;
- violating the Human Rights Code;

—taxing the voters of Ontario more to ensure that they receive less;

—adding a new criminal offence for our overworked courts to deal with; and

—quite apparently abrogating its responsibilities to a type of dictatorship run by the Law Society of Upper Canada.

Since the inception of Small Claims Court as a separate entity and the claim level brought from \$400 to \$10,000, there appears to have been a force gathering momentum to do away with paralegals by making them wage slaves of lawyers or regulating them out of the business. This has had the support of the Liberal, Conservative and New Democratic parties of Ontario. Each has had a turn in prompting the Attorney General to act. The leader of each party has been or is a member of the Law Society of Upper Canada, and at least one has been the Attorney General. The opinions of the former commissions held by Dr. Ianni, dean of Osgoode Hall, and Mr. Chief Justice Cory have been disregarded, although I at least will admit that several of their words were kept.

In a report by His Honour Mr. Justice Marvin A. Zuker, the Law Society of Upper Canada states that it has commissioned its own report that states "500 stakeholders (100 ordinary people, 200 paralegals and 200 lawyers) were interviewed." With this presentation, we are presenting a partial list of 18 names of Canadian taxpayers who petition you not to send this bill for third reading and passage.

We didn't go from door to door as well. I can be criticized for this—correct. As well, we misplaced the petitions of 75 others, and some of them were clients. Of the lawyers we act for, they have stated that the law society is not doing their job.

It's also mentioned that 200 paralegals were interviewed. That's an interesting statement, as, of all the paralegals I've spoken to from the Niagara River to Midland, Ontario, no one was ever interviewed. We knew about the law, but no one was ever interviewed. The only conclusion that can be drawn from such a report is that it's fraudulent, if not misleading.

Mastering the new bilingual court forms has been a task unto itself. This Access to Justice Act, Bill 14, would make all that learning worthless. Turning the act of advocating for a person into a crime or turning paralegals into the aforementioned wage slaves of lawyers or else regulating paralegals until their demise will not be something the people of Ontario can afford. There was talk of grandfathering and of exempting certain various groups, but none of that seems evident unless this committee and the law society had wished to curry favourites.

Do not take any of my statements as saying that we do not think highly of lawyers. One does property, another

does Family Court, and yet another the appellate courts. Additionally, we refer clients to lawyers because of the complexity of the issue. It is this Access to Justice Act, Bill 14, that is contradictory in the meaning and the application. This is the reason we must oppose it.

Thank you for your time. That concludes my presentation.

The Chair: Thank you. We have about a minute for each side, and we'll begin with the government side. Any questions, comments?

Mrs. Van Bommel: No, but I certainly want to say thank you very much for coming in and giving your presentation.

The Chair: Mr. Runciman.

Mr. Runciman: I just wondered how you felt the regulation should proceed. Are you a supporter of the society? Do you feel that's the appropriate vehicle? I know you mentioned government services here. That's the first time I've heard of that. You're thinking that a ministry could provide the oversight?

Mr. Bocskei: It was the Ministry of Consumer Affairs. It's all encompassed now into the one body. The Ministry of Consumer Affairs—

Mr. Runciman: Right. But you don't support self-regulation, then.

Mr. Bocskei: I don't support—

Mr. Runciman: Self-regulation. Most of the folks who have come before us, paralegals, have talked about supporting the need for regulation and calling for self-regulation rather than having the Law Society of Upper Canada. What you're suggesting in your submission here is that a ministry of the government should provide that kind of oversight.

Mr. Bocskei: You do have a ministry of government that provides that service. In the city I come from, Hamilton, you also have the Better Business Bureau. So a person having a problem can contact either party. As I mentioned with regard to lawyers, I know the letter. I can write it, but I just don't have the names to fill in: "Sorry, we can't do anything for you. We suggest you take this matter to Small Claims Court."

1550

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: One of the areas of complaint we get—or at least I get in my constituency office, and I suspect my colleagues do too—is the very sort of thing you're talking about: people who have a horror story to tell about a lawyer, who call upon the law society to intervene for them, and who get a very legalistic response saying, "This is not within the jurisdiction of the law society," or words to that effect. I want to underscore what you've said in that regard. That drives people right crazy. They've oftentimes had their bank accounts emptied, they've paid fees after fees after fees, and they aren't even close to completing the litigation. They report having been promised the world, and all they get is the service of a notice to be removed as solicitor of record because there's no more money left in the kitty. I've got to tell you, I agree with you. If the law society has a

credibility gap, it's in that particular area of people not understanding what the law society can or can't do, and certainly not perceiving the law society as acting in the interests of the consumer of those legal services. That's a problem that the law society has.

Thank you very much. I appreciate your interest in this matter and your contribution.

Mr. Bocskei: I did have one further thing, if you wouldn't mind.

Mr. Kormos: Of course.

Mr. Bocskei: I had spoken to the assistant, Kevin Dwyer, and had mentioned that my secretary would also have a little bit of time to speak. I'd like to introduce you to Ms. Spence. She won't tell you she's a tireless worker and dedicated to the ordinary person and their problems; I'll do it.

The Chair: Thank you very much for your presentation. Your time is up.

JOHN POTTER

The Chair: Next, I believe we have a teleconference. I'm sorry; I'm going too fast here. John Potter.

Mr. John Potter: Thank you, Mr. Chairman, ladies and gentlemen of the committee.

The Chair: Yes, you may begin.

Mr. Potter: Ladies and gentlemen, let me begin by thanking you for the privilege of addressing this honourable gathering today, especially on such a distinguished day as September 11. Quite the memorial five years ago, and I hope that five years from now we will have in place legislation, guidelines, that will make this look like a real working experience for all of us. I am very much in favour of legislation, but I'd like to explain what I'm in favour of and what I'm not and qualify a couple of things before I begin.

First of all, my name is John Potter, and no, I'm not any relation to Harry. There is a family resemblance, I'm sure. I'm a practising paralegal in the GTA and I'd like to preface what I say today by stating that although I serve on executive committees, including the Institute of Agents at Court, and on two advisory councils, one with Mr. Dray at Humber College for paralegal studies and so on, and have been a member of the PPAO and other organizations, I frankly do not speak on behalf of any of them today, simply myself. As they say in broadcasting, the opinions expressed are strictly those of the commentator.

Sometimes it's wise, in my opinion, to look back in history to see how we can guide ourselves, especially into the future. In doing that, I'd like to reflect back with you several decades ago when the word "paramedic" was used to describe proposed programs for lay people to become trained and, most of all, proficient in administering first aid and advanced levels of emergency care to injured people and ill patients before transporting them to the hospitals. I can tell you from personal experience—in those younger days of mine, I was an ambulance driver, and that's what they called us. They didn't call us para-

medics; we were ambulance drivers. We were first-aid instructors, and that was the extent of our qualifications. I can say without any exaggeration at all that there were cries of horror that rang out all across the province when they started talking about paramedics. The very thought that somebody would be administering intravenous, using technical equipment, heart monitoring equipment and so on at the roadside was just foreign to anybody's way of thinking.

But Ontario moved forward and they did an outstanding job. The San Francisco Fire Department was the standard internationally for paramedics. In fact, they even made a television show about it. But to our credit, Ontario designed and implemented one of the most professional paramedic programs in the world, and today our paramedics save more lives and provide faster and better service around all of this province than their counterparts anywhere in the world, in my opinion.

What can we learn from this experience and this awesome success story? First and foremost, that with the proper planning, training, licensing, regulation and follow-up, lay people can be taught to perform "para" anything in a professional, competent manner which meets the needs and protects the best interests of the public. To that end, I applaud the concept of establishing standards and qualifications for the paralegal profession, and I refer to it as a profession as opposed to an industry or any other kind of job description. It is a professional occupation because it is streamlined to the legal profession. Not only in this province but right across the country, we will be the catalyst that starts this ball rolling so that there is a minimum standard of performance for all paramedics, and now, in the years ahead, all paralegals. I'm looking forward to being part of that.

I'm in my 60s and I'm probably going to retire before this is all final legislation and all the i's are dotted and the t's are crossed. But I would like to be a part of supporting this government in getting licensing, regulation, bonding, errors and omissions insurance and education, all the things that are important, into the program without tying the hands of people who are professionally practising, either under the direction of a lawyer or on their own, in a competent and professional manner.

There is one thing I'd like to stress, however, and that's that the paramedic program is not regulated by doctors. They are regulated, they are licensed, they are trained, they are professional beyond belief, but they aren't regulated by doctors. They are regulated not by the Ontario Medical Association but by the department of health. Are they accountable? You bet they are. But doctors don't regulate them.

On the other hand, I think the mistake that a lot of people—paralegals, lawyers and people in the public in general—are making is looking at this and saying, "Well, what's going to happen if?" That's the big question. It's always, "What if? What happens when?" Well, in my humble opinion, we have a long way to go before we have regulation in place that will answer all of the questions and address all the needs of everyone.

Since these points that I'm making today are my opinions and not those of anyone else, I'd like to break them down into 10 points, if I may, and just highlight them. I may not run up to the 20 minutes that's been allocated, but that's fine. I just want to make a few points and ask your input as to how you feel about it. I've seen Mr. Kormos and Mr. Runciman on television repeatedly and I admire their dedication and their hard, fast drive toward getting legislation in place, but I'd just like to bring a few ordinary, everyday questions to the table. Perhaps it's because, in my particular field, in my particular area of practice, I have a bit of an advantage: There is nothing in this legislation that will hurt me—nothing whatsoever. There's everything in this legislation—or many of the things in this legislation can only help me. I don't mean to joke and say that once we're regulated and licensed and everything else, we can all raise our fees. I don't mean it that way.

1600

What I mean simply is that since 1980 I've been a licensed private investigator in this province and I work for 11 major law firms in the city in that capacity. In addition, I'm a paralegal agent. I appear in traffic court and in Small Claims Court. I don't write wills, I don't do divorces, I don't do real estate, and it's only because I choose not to. I don't do landlord and tenant work. One would argue that the only way to test a will is to have the person die. Well, the lawyer who wrote the will could die. What if? You know?

My concerns and the things that I would invite this committee to really focus on are the following: Licensing is key; identification of the person who is providing the service and a licence and a standard of performance that is minimum, regardless what that is; bonding; errors and omissions insurance; accountability; reportability; education, whether that's formal or informal or on-the-job training and college, it doesn't matter, but a standard of education where the person knows of what they speak.

I refer to this word with respect: "articling." How successful would a lawyer be if he or she was called to the bar and was allowed to hang out a shingle instantly, without having articulated with a senior person, without having mirrored their activities and having gone through the guidance of a senior counsel? Similarly, paralegals, I suggest, should do the same thing. If you graduate from a college course, be it Humber, Sheridan or any other course, you should still have a period of mirroring or mentoring and guidance similar to articling. I don't care what you call it, but it should be on-the-job training by a senior paralegal.

I also respectfully suggest that paralegals, if they're competent and qualified and licensed and bonded and have errors and omissions insurance, could fulfill another major role and that is being commissioners of oaths.

Finally, one of the bugbears that I think a lot of people have to address, or that they fear, are trust accounts. If you're running a trust account for Small Claims Court—and there's a rumour that the limit will go up to \$20,000, but it's currently at only \$10,000. Let's say, for example,

that I represented you in Small Claims Court and I was successful in getting back \$10,000 plus costs, plus this, plus that and so on, and took my modest fees out of that. I might have \$10,000 of your money, and I don't want that to be taken and put in my personal bank account or my company's bank account. I feel that it should be put in a trust account, and from there, that trust account should issue a cheque to you, the client.

Conversely, I work in traffic court. It's not uncommon for us to charge \$150 to \$450, \$500, depending on the nature of the accident or the occurrence. Ninety per cent of the work is done within the first 30 days, and then you might wait—and we've all heard this—anywhere from a year to a year and a half to get a trial date. You can get another agent to handle this in 15 or 20 minutes. Just phone a couple of agents in the IAC or any other major organization and ask them, "Would you handle this case for me? I'm double-booked or I'm sick or I'm in the hospital," and they'll charge each other a modest fee of \$50 to \$100. So if you had 100 cases at, let's say, \$50 each, that's only \$5,000. Why would a traffic court agent require a trust account? Why wouldn't he just require what I require as a private investigator, and that's a \$5,000 surety bond? Or \$10,000, if you think he's going to have 200 cases. That makes more sense, in my humble opinion, than having trust accounts where you move \$50 bills back and forth and back and forth.

Those are my concerns. Those are the issues that I came here today to ask about and to mention.

Finally, advertising: One of the major reasons that people don't use paralegals is misleading advertising. I can tell you that there are associations, one of which I'm a member, that refuse to accept certain members, even though they're good, competent people running very successful businesses, because of the way they advertise. That's a shame, because they're good people, but frankly, the way their advertising is projected to the public is misleading, and that's dishonest. I heard a gentleman here today say that lawyers are dishonest. I want you to take those Yellow Pages he referred to. I want you to find a trade, a profession, a career, I don't care, from A to Z that has no bad apples—anything; I don't care what it is. It doesn't exist. So preaching about the bad lawyers, the bad paralegals or the bad this or the bad that, that's a red herring. It's the minimum standards of performance, it's the professionalism, it's the education and it's reaching out to the public and saying, "Here we are. This is what we stand for. This is what we do." Just like doctors don't expect that the lab technicians, the nurses and the operating staff are all bucking for their job or trying to undermine their authority, neither are paralegals trying to undermine the authority, the knowledge and the expertise of lawyers.

For the record, I am licensed, I am bonded, I do have errors and omissions insurance, I do have a standard of accountability through the professional associations of which I'm a member. There is a reportability, there is a minimum standard of education and there is an ongoing education program in place. We do take in young people

who are coming out of colleges and mentor with them. So much of what we're proposing is already in place. I'd invite you to get involved physically and communicate with the professional organizations that are paralegals around the province, not just somebody who said, "Yesterday I was doing this job and I'm tired of it, so today I'd like to be a paralegal, and I can spell 'paralegal,' so by law I'm allowed to be one." No, that's not a standard. We have to have minimum standards and we have to have those minimum standards high enough so that the public is excited about dealing with a paralegal and so are lawyers. Quite frankly, a great deal of my business comes from professional lawyers. They have a respect for me and my practice and I have the same for them. I would encourage this committee to promote that good win-win relationship between the law society or any other governing body of the province and the paralegal professions.

I do thank you very much for allowing me the opportunity to speak here today.

The Chair: Thank you very much. We'll start with Mr. Runciman; a couple of minutes each.

Mr. Runciman: Thanks, Mr. Potter. You don't look a bit like Harry.

Mr. Potter: Thank you, sir.

Mr. Runciman: I appreciate you being here. We had an earlier witness—and I gather you were here—Mr. Dray.

Mr. Potter: Yes.

Mr. Runciman: One of the comments he made with respect to—and I'm not quoting him directly, just paraphrasing; my mind is going blank at the end of the day listening to so much of this—trying to get your profession to regulate itself or even organize itself was a bit like herding cats. He was the first witness we've heard who is a paralegal who is supportive of the law society being the regulating authority. I'm just wondering what your experience is. Do you share that view that members of your profession are so challenging in terms of pulling them together, it is impossible to self-regulate, as he is suggesting has been his experience?

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Mr. Potter: No, sir, it's not. Quite frankly, I think we came very close to that. There was a point less than two years ago when all the known and registered paralegal organizations, by various titles, grouped together and said, "Let's all be under one umbrella, with one board of directors and one leadership." Unfortunately, what came down from this government after that caused them to say, "Well, what about the 'grey' areas?"

I mentioned that I don't practise in the areas of real estate and so on and so on. I'm not suggesting that that shouldn't be done; I'm just saying that my areas of expertise are not in those areas, any more than a lawyer might say, "Well, I practise family law and not criminal law"—similar. But to answer your question directly, sir, there is no reason at all why we could not at some point in time become self-regulated. Whether it's wise to suggest that we start that way is another thing. I would

respectfully suggest that with the guidance and supervision of a government organization, and, frankly, not the law society particularly—and I don't want to steal anyone else's thunder, but that is very much like putting the fox in charge of the henhouse. But on the other hand, I don't want to see us abandon all the good work that has been done for these past many years. That would be throwing the baby out with the bathwater. And that's your expression, sir. You said that on television.

I think we'd be wise to look at another organization that could look, at a distance and impartially, at any conflict that might exist between a lawyer and a paralegal, or in a legal capacity, and just say that any organization, any government organization, even if it's newly formed, could oversee and monitor paralegals for a given number of two, three years. And eventually, we would be what real estate agents are. They're self-regulated. Insurance brokers, like RIBO and so on: They didn't start off by being self-regulated, but they are now.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you very much, Mr. Potter. You've made a healthy and valuable contribution to the discussion. One of the latter points you made was around the objectionable types of advertising. Are you talking about, "You get found not guilty or it's free"?

Mr. Potter: Sir?

Mr. Kormos: Give us some of the others.

Mr. Potter: I would not, in all honesty, come here and badmouth what some people think are my competition. They're just other people who are in the same business.

Mr. Kormos: I understand. But we've got to understand what you're talking about.

Mr. Potter: Yes. Since you raised that issue, yes, that's one of the things that bothers me personally. And I know—

Mr. Kormos: Does it really work that way?

Mr. Potter: Sir, I have copies of all their contracts, and mine is the only one that says, in big, bold letters: "We do not guarantee to win or provide our services at no cost." Because when I go to Loblaws or Dominion, they don't want to know that; they want cash. So I charge for my time; I charge for my services. I do the very best job I can for a very modest fee. But I don't guarantee to win or it's free. That's just nonsense. What that really means is, "Save you a point or save you a dollar and it's a win." In other words, if I can save you one point off the offence or a dollar off the fine, I've won. You could do that yourself, sir. So my way of looking at it is, I'd like to go to court and I would like to do something for you that you can't do yourself.

Mr. Kormos: What other types of misleading advertising are you speaking of?

Mr. Potter: Things where people say it's X number of dollars for a divorce. Well, yeah. The fees that the government charges, sir, are more than what they're advertising in the newspaper or on these signs.

The Chair: Thank you. The government side.

Mrs. Van Bommel: Thank you, Mr. Potter, for your presentation. Just a bit earlier Mr. Runciman talked about

herding cats. I'm sort of getting that sense here as well, that in terms of paralegals we've heard about different associations. We heard about the Professional Paralegal Association, which is now defunct. You said that there was a time where you came very close to being self-regulated about two years ago. Can you tell me what happened there?

Mr. Potter: No, I beg your pardon. If that's the impression I gave you, I apologize. What I said was that all of these known organizations grouped together and agreed to be united under the Professional Paralegal Association of Ontario and then maintained their own individuality. For example, if you're in the traffic ticket group, you would be with the Institute of Agents at Court, perhaps, or another organization. You could still have that membership and learn through their seminars and sessions and regular monthly meetings and so on, but you would also be a member of the Professional Paralegal Association of Ontario.

Unfortunately, as I understand it—and I wasn't on the executive of that organization; I was only a member—we voted as different organizations to disband the PPAO because the legislation that was proposed didn't support all the different areas that the membership of the PPAO practised. Now, in my case, as I said, on the outside it's not going to hurt me personally because those are not areas in which I practise. But am I concerned for the people who do practise in those areas? Of course I am. The people who are good at writing wills or doing estate law or real estate or whatever else: If they're really, really good at it, and maybe they're even lawyer-trained, they should be encouraged to be licensed, be bonded, be insured, have errors and omissions insurance and do their jobs.

The Chair: Thank you, sir. Thank you for your presentation this afternoon.

MCGUINITY AND MCGUINITY LAW OFFICES

The Chair: The next presentation is by teleconference. Do we have Mr. McGuinity on the line? Good afternoon, Mr. McGuinity.

Mr. Dylan McGuinity: Good afternoon.

The Chair: Welcome to the committee. You have half an hour for your presentation. You may begin.

Mr. McGuinity: Thank you very much. Is this Mr. Dhillon speaking?

The Chair: Yes.

Mr. McGuinity: Okay. Thank you very much. I'm not going to take the 30 minutes, I believe, and I'm sure you're all ready to finish up for the day. Let me tell you why I appreciate the time. I'm a small-time lawyer here in Ottawa. I've been practising since 1985. I've always been in good standing with the law society. I got involved when I started reading the materials put out by the law society in the recent past and of course, more recently, the materials put out by your good government dealing with Bill 14.

Here's the way I want to present myself. I don't really deal with big business; I don't even deal with medium-sized business. I'm in a small firm here with a total of five lawyers. For lack of a better term, I serve Ontario families; I serve individuals. The lawyers in my office are also representatives of Ontario families. That's the picture I'd like to paint for you parliamentarians today. I strongly believe that as I speak to you, I represent thousands of lawyers in Ontario who have similar practices. We have a good number of lawyers in Ontario, and that's something that we, you and myself, should all be very proud of. It's an asset. I would say to you that roughly 40% of our lawyers in practice today are like myself and I think we have good input when you're thinking about this bill.

If you boil it down, what is it that lawyers in small firms like mine do every day? If you boil it down, what we do is we meet clients, we listen to clients, and before we provide any kind of legal service, what we do is we provide, to the best of our ability and our training, unbiased independent legal advice. That, I think, is the key to your consideration when it comes to regulating paralegals.

To make my point, I think it would be similar to many constituency offices of MPPs throughout the province. What you do is you meet and you provide advice to constituents. That's what we do. We're like Home Hardware: We have branches all over the province, but we're independent. We're like Tim Hortons: We have branches all over the province, but we're independent. That's how I'd like to present myself to you today.

One thing I'd really like to make clear: I am not speaking to you as someone who's anti-paralegal. I am very pro-paralegal. I am pro-consumer protection; I am pro-access to justice. When it comes to consumer protection and access to justice, I think you can view myself and others like me as the access to justice that the bill is trying to promote. You've got the best solution on the boardroom table. You have lawyers, and we are producing 1,000 lawyers a year, roughly. That is a darn good solution if you're trying to advance consumer protection and, of course, increase access to justice.

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Here are my three or four suggestions for you to consider.

First of all, in the bill I think it's better for the public, lawyers and paralegals if the bill refers to a lawyer as a lawyer and if the bill refers to a paralegal as a paralegal.

The next point: I think it's great the way the bill has a broad definition of legal services, and there's a darn good rationale for that, but what it doesn't have is a definition of the practice of law. The reason I would recommend that is that the practice of law, if defined, identifies for lawyers, paralegals and, above all, the public, which legal services are best provided by lawyers, again, for consumer protection. You'll find that many other provinces in Canada have come to that definition: Manitoba, PEI and BC, to give you examples. Other provinces have done it for that reason.

My next point: I recommend in the bill that you cover something which is now missing, and that is, define the scope of practice of licensed paralegals, for the same rationale as I gave for defining the practice of law. If you define the scope of practice for licensed paralegals, again, lawyers, paralegals and the public will know what they're seeking when they call upon a paralegal.

My rationale for the last point, the scope of practice for paralegals, is mainly based on what the law society report of 2004 came up with. It's not my idea. The law society, I believe, is unbiased. I believe the law society has the public good in mind. In that report they've consulted over 50 stakeholders, over 68 submissions, and defining the scope of practice for paralegals is their very first recommendation. Recommendation number one is absent in Bill 14.

It's very simple; it's very clever. The law society recommends that when we go about licensing paralegals, we simply permit them to do what they may currently do by law and by case law. In recommendation number one of that report, they set out Small Claims Court matters, provincial offences matters, tribunals, appeals under the Provincial Offences Act, etc. It's all there. It's certain. I think if we're dealing with consumer protection, the more certainty in the act, the better.

My last point deals with, I think, an unintended result of Bill 14 and it's the one that concerns me the most. My last point to you is title insurance companies: They are very strong. They have a very good product—title insurance—it's something you see in real estate. Their lobbying efforts have already begun. They've already begun lobbying to promote your bill and at the same time to be exempted from your bill. Again, if you bring certainty to your bill, it will tell the public, lawyers, paralegals and title insurance companies at the outset whether or not title insurance companies may continue their lobbying efforts to be exempt from all of the good control that Bill 14 is promoting. That's my last point, which is the most important of all.

I strongly believe that your offices are best to protect the public when it comes to the different bodies out there that will seeking exemption from the regulations of the bill and, of course, seeking exemption from regulation by the law society, if in fact that's what you end up doing.

One of my final points is, the reason I want you to bring certainty to this is that as recently as June or April, our bencher, our treasurer for the law society, while speaking to the Toronto Star, referred to paralegals being limited to those areas I just mentioned a moment ago, such as Small Claims Court, traffic matters, workers' comp. But then our treasurer went on to say that for now they won't be allowed to do things like simple land transfers or divorces. So you can see our treasurer is reflecting the uncertainty of what the scope of paralegal activity may end up being, and that's one of the main reasons why I'm happy to speak to you today, to bring this viewpoint to you from a lawyer in the trenches.

I'm also a lawyer who encouraged many other lawyers across the province to send their views to all of you, and

you may have received different e-mails from different lawyers which appear unsolicited. I want you to know that it's something that I did on my own. I simply e-mailed and faxed lawyers throughout the province asking them to please take a few minutes to respond to Bill 14 and what it stands for. We lawyers in the trenches are a very quiet bunch, so I'm happy if you have received these e-mails, and I thank you for hearing me out today. I'd be more than happy to clarify or answer questions.

The Chair: Thank you very much. We have about seven minutes for each side, beginning with Mr. Kormos.

Mr. Kormos: I understand the submissions. I appreciate this person having taken time out of what is undoubtedly a far busier schedule than we have. He's got people in his waiting room. I appreciate him taking the time to talk to us.

The Chair: The government side: any questions, comments?

Mrs. Van Bommel: I just want to say thank you as well for your presentation. It's much appreciated.

The Chair: Finally, Mr. Runciman from the opposition.

Mr. Runciman: Yes, thanks, Mr. McGuinty. I appreciate it. I tend to share your view with respect to scope of practice. I hadn't thought of it from the perspective of defining scope of practice for a lawyer, but it's certainly an interesting perspective. With respect to paralegals, I think that is something that is an absolute necessity in terms of moving forward with this legislation.

I have to say, I just asked Mr. Kormos about your interventions with your colleagues to send us e-mails. I can't say that I have received much, if any. I'm not sure if that's a reflection on your efforts. I don't think it is, but perhaps you're going to have to give further encouragement to some of your colleagues.

Mr. McGuinty: Did you mention whether or not you had received any?

Mr. Runciman: No.

Mr. McGuinty: Okay. Well, if you speak to Ms. Anne Stokes, she has confirmed that she's received quite a few and that she's passing them along to the members.

Mr. Runciman: Okay. As individual members, I don't think we're getting them, but maybe that's the process that your colleagues are following.

Once again, thanks for your submission.

The Chair: Thank you, Mr. McGuinty.

Mr. McGuinty: Thank you. All the best.

DME PARALEGAL SERVICES

The Chair: The final presentation today is from DME Paralegal Services. I believe we have Maoline Macdowall. No? Good afternoon.

Mr. Bruce Parsons: My name is Bruce Parsons and I'm acting as agent for Ms. Macdowall.

The Chair: Thank you, Mr. Parsons. You may begin; you have 30 minutes.

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Mr. Parsons: I'd like to say thank you to everybody for allowing us the chance to speak. I'd like to comment, first and foremost, on what I believe is the goodwill of all parties involved. Some of the things that I'm going to say are going to be controversial and interesting. They're certainly going to be a little on the confrontational side.

You heard earlier from Mr. Paul Dray, and I have the utmost respect for Mr. Paul Dray. On the flip side of the coin, the alter ego, if you will, where Mr. Dray felt that paralegals were incapable of being brought together to regulate, I felt that the biggest single failing of all the organizations was to do that, and the principal architect in fact of the steps that paralegals have made in bringing a regulatory proposal together—certainly there's a fore-runner to the PSO white paper which you'll see. I have it available electronically.

I'm a last-minute fill-in for Ms. Macdowall because Ms. Macdowall had some serious concerns about speaking to the committee. Ms. Macdowall received a letter from the law society—not recently; September of last year—basically requiring that she change her name because there were some concerns about how it may relate to her area of practice. After the Cory hearings, you may or may not be aware that some of the paralegals who appeared and spoke who were operating in what they call “grey” areas were actually within the next six months approached by the law society. We hear that this is a coincidence, but certainly it's cast a pallor on the process where paralegals come forward to speak.

That being said, I'm going to try to get through my proposal as quickly as possible and allow you to have some questions. Hopefully, I can give you some solid information on what's happening from the paralegal side.

The average wage in Ontario is \$31,133. At a minimum hourly rate of \$150 plus costs and disbursements, even the most junior lawyer is obviously outside the realm of possibility for the average citizen, regardless of the issue she or he is facing.

This committee has heard about, and indeed dealt with, the issue of the apparent and perceived conflict of lawyers regulating paralegals. You have heard much about vulnerable, unrepresented citizens in the legal system, particularly in the sensitive area of family law. Looking at the above numbers, the cause of this is readily apparent, a fact supported by the Law Society of Upper Canada's study, the Sole Practitioner and Small Firm Task Force, and I quote: “... have surfaced in a market environment characterized by the growing inability of the client population to purchase legal services and/or pay adequate fees for those services.”

The accepted version of the conflict is the competition between paralegals and lawyers for clients. In fact, I believe the issue is more complex. Given the inability of the average citizen to access the legal system, the rule of law itself is in danger of falling into disrepute. When the population is deprived of access to the legal system to resolve disputes or for simple necessities of life, the rule of law can only suffer.

The purpose of regulation is set forth eloquently in an important recent report prepared by the Law Society of Manitoba: "No action should be taken unless the regulation will substantially reduce the risk of harm to the public and unless decision-makers are convinced that the effect of implementing the regulatory form will result in greater benefits for the public than the costs." These costs are not limited to the expense of administering the regulatory regime, but must include the cost to the public of reduced competition.

The question becomes twofold: Is the Law Society of Upper Canada capable of regulating paralegals in a cost-effective fashion, and what is the cost of such regulation to the public, including the cost of reduced competition?

Why do paralegals believe the Law Society of Upper Canada will reduce competition? The Attorney General approached the Law Society of Upper Canada requesting their assistance as a regulator for paralegals. The law society had the opportunity to work with paralegals to develop the approach. No request was made. The law society brought forth its own report without the input or involvement of the paralegal organizations. The law society developed, with the colleges, the college advisory group. Again, paralegals are conspicuous by their absence.

The law society proposal to the Attorney General is clear. Where paralegals are permitted to appear by law now, the law society will regulate those paralegals. Where paralegals currently provide services to the public that are not expressly permitted by law, they will not regulate those areas.

The impact of this approach will be to further cast the rule of law into disrepute. Pick up any paper, open any phone book, and you can find dozens upon dozens of paralegals advertising services for uncontested divorces, incorporations and business registrations. These services are to be excluded with regulation and these paralegals prosecuted for unauthorized practice, at a cost to the taxpayer of an estimated \$3 million to \$5 million per year. That comes from the County and District Law Presidents' Association memo that is attached to my submission. This memo is attached for your review. What this memo does not consider is the impact on the general public of the removal of 1,000 legal service providers—paralegals—who provide those services to the public. Nor does the memo consider the impact on those parties whom those paralegals in question currently represent. What happens with their files? What about the fees they've paid and their issues?

Convocation recently voted to spend hundreds of thousands of dollars to assist sole practitioners and small firms. One of the questions asked in their survey was how much their business was being affected by paralegals. Several members of the sole practitioner and small firm task force also sat on the paralegal task force, including, at one point, the chair, William Simpson.

Recent comments by the treasurer of the Law Society of Upper Canada, Gavin MacKenzie, quoted in the

Toronto Star confirm the intent of the law society to dramatically limit paralegal practice.

In the environmental scan of 2000 commissioned by the law society, the satisfaction of clients with services provided by paralegals was the equivalent with that of services provided by lawyers. This survey included the areas targeted by the law society as outside the regulatory scheme.

How can the law society and its treasurer speak so conclusively about where paralegals will practise when the regulations themselves will be set by the legal service provider standing committee as set up in Bill 14? How can the law society and the treasurer be sure that, pursuant to section 4.2, numbers 2 and 3, access to justice is assured by restricting paralegal access in these areas and that banning paralegals from these areas of practice protects the public interest? I would argue that by ensuring licensed, regulated paralegals are available, access to justice is enhanced. I cannot see how banning paralegals from these areas, where the public has obviously voted with their wallets to support paralegals, is in the public interest, nor can I see the use of taxpayer dollars to prosecute paralegals in these areas as being in the public interest.

The law society has argued that the public needs protection from unscrupulous and incompetent paralegals. I suggest that by ensuring that paralegals performing these services are insured, regulated and have a compensation fund, the public interest is more than adequately protected until the competency tests under regulation are established. These paralegals are, and have been for some 20 years in some cases, providing these services. Many paralegals received their training in law offices, performing these same services for lawyers, which services lawyers then mark up and charge their clients. To suggest widespread incompetence of these paralegals flies in the face of the law society's own environmental scan.

The law society and their treasurer can speak publicly about what they will and will not permit paralegals to do under Bill 14, because under Bill 14, Convocation holds the power to overrule the legal service provider standing committee. It is ironic that paralegals are not mentioned by name in their own regulation. Paralegals in other jurisdictions are actually supervised law clerks. So when the Canadian Association of Paralegals, for instance, speaks on behalf of paralegals, they actually speak for supervised law clerks.

Bill 14 proposes that only lawyers will be members of the law society, that Convocation will consist of 40 lawyers, eight lay benchers and two paralegals. If only members of the law society can elect benchers, paralegals are denied the vote electing those 40 benchers who control their fate and membership in their own regulatory body.

The legal service provider standing committee will consist of five paralegals, five benchers who are lawyers and three lay benchers. The lay benchers are to provide public input. In fact, they have already approved the law society's position, without having heard from paralegals.

They will, by virtue of their role as benchers of the law society, be much more attuned to the needs and goals of lawyers—there are 36,000 lawyer members of the Law Society of Upper Canada, and estimates are that there will only be 1,000 paralegal non-members. Further compounding this injustice, the law society has been interviewing paralegals, allegedly for appointment to this committee. Clearly, the government and the law society intend to stack the committee with compliant paralegals.

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Paralegal concerns about the law society intentions have some justification. You can understand why we are a little worried. The law society failed to manage the provision of legal aid in the province of Ontario. The difference between lawyers and paralegals will make it almost impossible for the law society to fairly and effectively manage paralegals. The margins of profit in a paralegal office are small and primarily based on volume. Paralegals tend to excel in one area of law which lends itself to their business model. Lawyers tend to operate on a much bigger scale and may be the most regulated profession in existence. The complexity of the rules governing trust accounts, for one example, would render a traffic court practice unsustainable. How can that be in the public interest?

Paralegals have proposed a form of self-regulation/public regulation that includes the law society. We acknowledge the wealth of experience the law society has in many facets of regulation. We propose a self-funding model, requiring minimal support for start-up, and have a business plan based upon actual paralegal practice, not on solicitors' practice.

You've seen the white paper I am attaching electronically—actually, I have them here on disk, copies of a much larger proposal that came out in 2004. With the conflict between the various paralegal societies, it has been brought forward slowly but surely.

Paralegals have been essentially excluded from the regulatory process to date, but we have a great deal to contribute and have worked extensively on this issue. PSO members—and when I say “PSO,” please let the record show I mean PSO and PSC—are subject to a code of conduct and a discipline process and have held errors and omissions insurance since at least 1997.

Recommendations: I would like to see schedule C of Bill 14 pulled out and reworked. In the alternative, I would propose the following revisions: that we enshrine the rights of paralegals to practise in the areas where paralegals have been practising for at least the last five years. Where paralegals provide services to the public, let's let that continue.

Amend the bill to provide that the Attorney General appoint three members of the public who are not lay benchers and not lawyers to provide fair public representation on the legal service provision committee, rather than the current proposal of three lay benchers appointed by the treasurer of the law society.

Amend the bill to allow the two representative paralegal organizations, the Paralegal Society of

Ontario/Canada and the Institute of Agents in Court, to elect the initial paralegal members of the legal service providers standing committee.

Enable paralegals to be full members of the law society and eligible to vote for all benchers. There is precedent in the law society's own rules, which provide for regional representation.

Remove the right of Convocation to override the decisions of the legal service providers standing committee. Perhaps a form of binding arbitration would be appropriate in an instance where the parties disagree.

Amend the legislation to allow paralegals to be called paralegals.

Prosecution of all paralegals currently in practice should cease until the committee brings forth regulations establishing licensing standards in each specific area of practice, provided that the paralegal has errors and omissions insurance, is a member of either the PSO/PSC or the Institute of Agents in Court, and the paralegal agrees to submit to the law society's discipline process. This will allow for immediate protection of the public without disruption of the current services to the public while the areas of practice are formalized.

Establish a province-wide information advertising campaign informing the public that paralegals are licensed, regulated and available to provide the public with low-cost legal services in specified areas. The message should not be limited to advertising a complaint process against paralegals.

Finally, this one's a little off topic, but amend Bill 14 to remove from schedule A under the Courts of Justice Act item 18, with the proposed addition of all parts of proposed section 116. The court may currently order periodic payments to injured parties where required. This is the medical malpractice section. This is a blatant attempt by the insurance industry to limit costs. The bill, as proposed, would increase costs to injured parties where they have to seek lump sum payments to make necessary accommodations for everyday living. This is not access to justice but a further erosion of the rights of victims and one more hurdle for an injured party in resuming their daily lives.

I would like to point out just one more thing. In the PSO white paper, our first self-regulation—talked about a fair bit. The actual proposal consists of an 11-member board, of whom four would be paralegals and two would be lawyers. In essence, paralegals are proposing that they form less than the majority of the regulatory body.

The Chair: Thank you. About four minutes each. We'll begin with the government side.

Mrs. Van Bommel: Thank you for your presentation. What I'm hearing here is that you are not so much concerned about being involved with the law society if we take these recommendations that you have made and incorporate that into the new legislation. Is that what you're saying?

Mr. Parsons: I would definitely prefer not to be involved, but I can certainly say that, with those accommo-

dations, the bill becomes much more palatable to paralegals.

Mrs. Van Bommel: So there is a sense in the paralegal community that they could live with this.

Mr. Parsons: Not as it currently exists, but certainly with substantial changes, yes.

Mrs. Van Bommel: Thank you.

The Chair: Mr. McMeekin?

Mr. McMeekin: Thanks for your presentation. You said it was controversial. I'm not sure. It didn't seem controversial to me, but maybe I'm missing something here.

I'm particularly curious about, when you talked right at the end of your presentation you said, "One other point about self-regulation." Then you said an 11-member body, four of which would be paralegals, and you then emphasized that that would be a minority of paralegals in their own self-regulatory body. Why would you do that? I don't think there's a professional group anywhere in the province where there aren't a majority of the members of that profession regulating their own body. Why would you trade that off so quickly?

Mr. Parsons: It's not necessarily a trade-off, but we've looked at the trends that are out there, and certainly the first thing that we saw was the new accounting act that came in around the same time as we put together the first version. We thought that certainly one concern about paralegals is that people tend to think that we're not necessarily able to bring things together. The other concern is that the law society has some issues with its self-regulation on an ongoing basis. It's a balancing act, if you will, and we hope to avoid that whole scenario. Obviously if the majority of the board is not paralegals, then you remove that conflict.

Mr. McMeekin: I yield to your wisdom, but I would just restate, for what it's worth, I don't know another professional organization anywhere in the province that would sit still for something like that. That's meant as an affirmation, by the way.

Mr. Parsons: Thank you.

The Chair: Thank you. Mr. Runciman.

Mr. Runciman: Thanks for your submission today. There was also a memorandum—I gather you provided this as well—from David Sherman, chair of the County and District Law Presidents' Association. Is that from your organization? I found that quite interesting reading as well, just skipping through it, related to Mr. McGuinty's presentation just prior to yours about the need for a definition of the practice of law. The quote in here is that this "will be of enormous assistance in prosecuting unaccredited paralegals." He didn't say that that was the justification for making that proposal. There is reference here as well that there "will be a substantial undertaking to put these paralegals out of business." These are the folks who would not be, in terms of the scope of practice that's being proposed here.

The other reference is to a financial partnership with the province because they're estimating \$3 million to \$5

million annually for the first three years of enforcement. Again, another reference to "aggressively pursuing prosecutions." It does raise some interesting questions with respect to what's behind all of this.

The Chair: Thank you. Finally, Mr. Kormos.

Mr. Kormos: Thank you kindly, sir. I appreciate you coming here. I understand the points that you've made. You also understand that qualified—highly qualified, very conditional—support for the bill, which I wouldn't have articulated as support for the bill, is going to be cited at least once, if not twice, if not thrice, by advocates for the bill as your endorsement of the bill. That's the problem with making—albeit highly conditional—gestures of support.

See, we had a trio of—I call them "the silver bullets" because they were supposed to have delivered last week—very competent, experienced paralegals who, when finally pressed, said, "Yes, of course regulate us, but regulate us under the auspices of anybody, anything but the law society." They were unequivocal; they were very, very clear. You've really tried to be fair, and I appreciate that. You also talked about some dispute resolution processes that would provide some relief.

So where do we put you on the ledger? Because we've been looking for the paralegals who support the legislation. Mr. Dray was here today, so I put him on the support side, but he is a bencher of the law society, okay? So may God bless him. Again, the wine cellar is an enviable life. So where do we put you—on which side of the ledger? For or against?

Mr. Parsons: You can definitely put me down as against. I would hope that we've brought forward some suggestions that, moving forward, can be incorporated to make the next go-round a little easier.

I had one meeting certainly as president of the PSO with the law society. Provided we don't discuss areas of practice or the issue of Convocation, I think there are some meetings of the mind, but we've reflected that in our own proposal. Certainly the law society has a lot of experience with regulation and some issues that we have not faced. They also have never regulated anything like paralegals. It would be like taking—

Mr. Kormos: That statement is going to be interpreted any number of ways too, I can tell you that.

Mr. Parsons: Yes. But it would be like taking a fine, fancy French chef with a sous kitchen and putting him in charge of a McDonald's. You can imagine what's going to ensue: It's not going to be good food for a little bit.

Mr. Kormos: Wait a minute: Who's the sous chef and who's McDonald's here? Don't run with that one. Thank you kindly. I appreciate it very much.

Mr. Parsons: Thank you.

The Chair: Thank you, sir. That concludes our committee meeting for today. We'll meet here tomorrow morning at 9 a.m. Thank you, everybody.

The committee adjourned at 1654.

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**Standing committee on
justice policy**

Access to Justice Act, 2006

**Comité permanent
de la justice**

Loi de 2006 sur l'accès à la justice

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 12 September 2006

Mardi 12 septembre 2006

*The committee met at 0905 in room 151.*ACCESS TO JUSTICE ACT, 2006
LOI DE 2006
SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning, folks. Welcome to the standing committee on justice policy. We are meeting this morning on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

TORONTO LAWYERS ASSOCIATION

The Chair: Our first presentation this morning is from the Toronto Lawyers Association, and we have Mr. Nestor Kostyniuk here. Good morning, sir.

Mr. Nestor Kostyniuk: Good morning.

The Chair: You have 30 minutes, and you may begin your presentation.

Mr. Kostyniuk: Thank you, Mr. Chair and members of the committee. I attend on behalf of the Toronto Lawyers Association to speak in favour of Bill 14, in particular in favour of the governance of paralegals by the Law Society of Upper Canada. I should point out at the beginning that the Toronto Lawyers Association has been in existence since 1885—we currently have just over 4,000 members, all lawyers in the city of Toronto—a very active association dealing with various issues involving the administration of justice. At the courthouse at 361 University we have the library and robing rooms. We give various educational experiences to our members, to student lawyers, to anyone who might choose to attend.

We have been involved with the law society and various lawyers' advocacy groups to determine whether paralegals should be governed, and if so, when and by whom. It has certainly been our conclusion that the law society is well equipped to do that job. If I might mention, our various lawyers' groups, whether it's the Canadian Bar Association, the Ontario Bar Association,

the County and District Law Presidents' Association or the Advocates' Society—many of our members are members of those too—represent the interests of lawyers and speak on behalf of lawyers. We try to educate the public on the need for lawyers.

I think what Bill 14 does is something quite different, and that's to look at—in the interests of the public, the protection of the public—whether there is a role for paralegals in Ontario, and if so, how the public should be protected from malfeasance, from errors and from negligence by paralegals. Currently, we have a system where lawyers are well governed. Again, I note that the Law Society of Upper Canada, with that name, is typically associated with lawyers. Indeed, as you may be learning through these proceedings, if you didn't know it already, the law society and lawyers don't quite get along all the time. The law society's mandate is to govern lawyers to protect the public first and foremost.

With this government bringing forward Bill 14, the question now is whether the law society is also in a position to, in addition to those onerous duties of looking after lawyers, govern paralegals. After going through the system for several years now, I have personally formed a belief, and the Toronto Lawyers Association is of the belief, that the law society is best positioned to do that.

As we review Bill 14, what we have been impressed with is that the model calls for governance in regard to very important issues such as insurance. Everyone makes mistakes. Currently, other than those regulated through the Financial Services Commission of Ontario to do accident benefits claims at FSCO—if you have questions on that, I'm a former chair of the bar dispute resolution group committee at FSCO. FSCO had a problem dealing with service providers, dealing with unregulated paralegals who seemed to be looking after those brothers or sisters with rehab companies in providing services and who were not looking after innocent accident victims. They seemed to be clogging up the system.

0910

What we found up at FSCO is that the mere regulation of paralegals required them to register, to be of good standing, to have errors and omissions insurance. We found at FSCO that the clog in the system where the unregulated paralegal seemed to be abusing, using up more of their fair time with the system, seemed to have been brought to an end by that. Other than in accident benefits, we have a system right now where paralegals are out there in an unregulated system where we do not

have those protections, where, when they make an innocent error—negligence—the public is not protected as a result of that. They should have insurance as called for in Bill 14.

The educational requirement is there. Certainly, we've always had it for lawyers, and that will continue to be the case. But the question is, should there be some minimal standards of education for paralegals? In our submission, there should be. In our submission, the model calls for that and is well designed to do that. I note that the next speaker, Linda Pasternak from Seneca, will be outlining for you the various programs that the community colleges are arranging. I know from my work for the Toronto Lawyers Association with the law society that that has been a key focus for the law society: to make sure that those educational programs are there, that they're affordable, that they're accessible, and that the public is protected by way of the services to be provided by paralegals, that they are being provided by people with appropriate education.

I will go on in my submissions to talk about the appropriate licensing and the discipline mechanisms for paralegals. Lawyers' advocacy groups such as the Toronto Lawyers Association will again tell you that we feel the law society does a good job on behalf of the public in protecting the public from malfeasance by lawyers. Are they in the same position to do that type of job for paralegals? We have come to the conclusion that they are, that the law society will be in a position to have a discipline mechanism for paralegals who are acting inappropriately. That's essential to protect the public.

Another key item must be that it's a self-funding system. Unless you choose to put tax dollars to work to allow paralegals to register, to have E and O insurance, they should be paying the costs of that system. Initially, the set-up costs to get this system going are something that should be paid by the government, but at some stage paralegals must pay their own way. Lawyers pay their own way. It's only fair that taxpayers not be called upon to subsidize paralegals. It's certainly clear that lawyers will not subsidize paralegals.

There is a role for paralegals in this system. There is a role, whether it's in Small Claims Court, whether it's in traffic violations—where they have historically done a good job—where the public needs the assistance of some people with some education, with some experience in those various areas. There is a role for them, but it can't be, and it cannot continue to be, in a totally unfettered, unregulated approach with no protection for the public, where the public goes to someone and hopes for the best. Sometimes word of mouth works, sometimes it doesn't. When it doesn't, that's the problem. You need regulation for them. I've talked about the E and O coverage. There's that important issue where there is malfeasance. Fraud, improper acts that are not negligent, not mere accidents, are something again. It has happened over the years. It happens in every profession. It has happened with lawyers. The law society has a compensation fund. It doesn't go through the errors and omissions insurance

because it's not an act of negligence, it's not an accident; it's malfeasance, improper acts.

Who should be paying for that? With the law society, we historically have had a compensation fund paid into by lawyers, so that if one of our members acts improperly—not negligently but improperly—the public is protected. That should certainly be there and it is in this mandate, where the law society will be making sure that there is that system for the innocent victim of malfeasance by a paralegal to receive some compensation.

There clearly has to be an itemized role for the paralegal, and that will be governed over time, one hopes on an ongoing reviewed process through regulation, by the law society to determine what is the practice of law and what activities should be done only by the lawyer with the education, with the experience, with the ongoing continuing legal education to do that job on behalf of the public. But after that there will be that role for the paralegal to do some additional work where the public needs it.

We see, as I say in my paper, the damaging consequences to the public now by that unregulated system. I was recently called as a witness in Brampton, where an unregulated paralegal had issued improperly a statement of claim on behalf of an alleged victim of a motor vehicle accident. We did not believe that the unregulated paralegal had any authority to act, had any ability to act, and indeed nothing occurred with the case. The case was dismissed; costs are payable by the plaintiff. At this point the defendant is not pursuing that plaintiff for those costs but that is hanging over the head of that person.

Unfortunately, with the way the system is set up now, the law society failed in its attempt to have a conviction registered against that paralegal. He was smart enough to have on the back of the statement of claim the name of the plaintiff, care of the name of a business, which was not his own and was not in his name. There was no way beyond a reasonable doubt to secure the conviction that the judge could find against that person, and that was a proper finding. That paralegal will still be doing those improper acts. One hopes, and one hopes that you do it speedily, that Bill 14 is brought forward quickly, that Bill 14 is there to protect the public from those types of improper acts.

We have in my paper a discussion about concerns brought by other lawyer interest groups about the difference between provision of some legal services and what lawyers do, which is practise law. That is something that's ever-evolving, something in my submission that is left for regulation and for the law society to deal with over time. Right now the key items that I ask you to focus on are the need for those paralegals to have some type of limited licence; what they can do and with an outline of what they cannot do; that their work should be restricted in improper areas. They need to be properly educated, they need to be properly licensed and they certainly need to be properly regulated.

Right now I point out again the issue of what happens, and I've seen these cases where an unregulated paralegal takes money from a member of the public. They have no

trust account; they put it into their own account. They use the money, unlike lawyers who must keep a trust account that differentiates. Whether you have five clients or 1,000 clients, everyone's money is his or her own, and you cannot use the other clients' money for the person you're working for at the time. You have a commingled trust account but specific to each individual. Currently paralegals do not have trust accounts; they have no governance over that. They take money and lawsuits then ensue over the whereabouts of that money. It's a danger out there. It's something that's hurting the public and that needs to be restricted. It needs to be covered. It is covered by Bill 14. I therefore again urge you to press it forward as quickly as possible.

As I mention in the paper, the Toronto Lawyers Association believes that the most important question before the Legislature now is whether these service providers need to be regulated, and whether they need to be regulated now. The answer in our submission to both of those questions is yes.

0920

We believe that the law society is in the best position to protect the public. They are doing that now, regulating lawyers. They should continue to do that by regulating paralegals. We support the law society in its attempts to properly supervise and restrict those service providers who are not lawyers and cannot practise law in the province of Ontario.

We believe that time is of the essence, that they have been acting in an unregulated manner for far too long, that the public has been at risk and continues to be at risk for far too long. It is submitted that Bill 14 properly sets out the framework. Regulations must then follow to enable the law society to do its job.

We agree that any legislation can always be improved, but we ask that you not allow the search for the perfect to become the enemy of the good. Bill 14 is good legislation. It's in the protection of the public interest. We encourage you to press forward with it as quickly as possible. Thank you, Mr. Chairman.

The Chair: Thank you. About five minutes for each side. We'll begin this morning with Mr. Runciman from the official opposition.

Mr. Robert W. Runciman (Leeds-Grenville): Thank you, sir, for being here. I appreciate your contribution.

Could you tell me a little bit about the Toronto Lawyers Association? How many members? What specialities do they represent, or is it across the spectrum? Just a little bit about the association.

Mr. Kostyniuk: It is across the spectrum. It was formerly known as the County of York Law Association. It has been in existence since 1885. We currently have 4,036 lawyers registered with us, crossing the spectrum but, most importantly, focused around 361 University, the main courthouse, in Toronto. A lot of the members are therefore from the litigation bar, both civil and criminal. They use the facilities at 361, the most important facility there being the library. We have a terrific

research association with librarians on call. They're in the forefront of a new computer program for lead libraries across the province, for research and for that type of technical assistance.

Mr. Runciman: I just have to say, based on that, that I am a little bit disappointed that your sole focus has been on the paralegal component of the legislation, given the broad range of issues and impacts on the justice system in Ontario. So I'm not sure if you have considered submitting your views perhaps in writing with respect to some of the changes to the Courts of Justice Act, the impact on justices of the peace, the Limitations Act. The kitchen sink has been thrown into this bill, which certainly has a significant impact on your profession. So hopefully your membership might reflect and give us your advice on some of the other very important issues contained in the legislation.

You talked about paying your own way with respect to paralegals and the regulatory structure. What do you contemplate the annual impact being? I know they were talking about numbers, with reduction of the scope of practice. We heard yesterday about 1,100 individuals who might be practising paralegals. What are you suggesting would be the annual impact in terms of their absorbing the full cost of this regulatory mechanism?

Mr. Kostyniuk: I don't have access to the budget or what that would be. I couldn't assist you on that; I'm sorry.

Mr. Runciman: I notice that we had an estimate here of \$3 million to \$5 million to get it up and running, and looking for a partnership with the province with respect to that. You've indicated that your organization feels that perhaps the government should be picking up the full tab related to that.

I was involved with a number of self-regulatory initiatives when I was consumer minister, and with the real estate industry and TSSA. We certainly had the support of the people impacted in terms of moving towards self-regulation. Here we've had, I gather, only one paralegal who's appeared before us, who was a benchler, who has supported the Law Society of Upper Canada being the regulatory authority. I guess there's some level of discomfort. I think they were all saying, "Yes, we believe it should be a regulated profession," that they share your concerns with respect to a number of areas, but they just think it's inappropriate that the law society should be the regulatory authority. There's this innate conflict. I guess that's a concern of mine, that you have the folks who want to be regulated but you have this head-on conflict with respect to who the authority should be. What's your reaction to that?

Mr. Kostyniuk: Again, we must educate the public that the law society is not there to protect lawyers. The law society is there to protect the public. That is its mandate. It's done a good job doing that with lawyers.

Re your question, should they be doing the job to regulate the paralegals? In our submission they're well positioned to do that because they have the experience in regulating people, providing some legal services. To add

the paralegals to that mix might be cost-effective for the paralegals and for the government. It would not create another bureaucracy, another organization, but rather an offshoot of the current mechanism that's there. You'd have the experience, the expertise of those people. I would fear that paralegals who have attended before you are content with the status quo and would certainly hope that if Bill 14 fails in that regard, it will be years and years before there is a new mechanism in place to regulate them.

The Chair: Thank you very much. Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you, sir, for joining us this morning. Lawyers who are regulated by the law society are members of the law society. As members, they vote on a region-by-region basis to elect benchers.

Mr. Kostyniuk: True.

Mr. Kormos: Why shouldn't paralegals who are regulated by the law society be members of the law society?

Mr. Kostyniuk: The question will be whether they have the size of a group. At this point you're only talking about 1,100 people. I would suggest that the more important issue will be protecting the public from them. Whether, with our good educational events that Ms. Pasternak will speak of next, their association grows and becomes large enough to support that in the future might be something, again, that the law society and government look at. To start with, to set up a mechanism for those few who affect the many, who affect the public of Ontario, I would suggest is putting the cart before the horse. We first need to regulate them and see where that goes over time. It's a fair question that needs to be reflected upon over the years, but at this point I might suggest that the more important issue is simply regulating them.

Mr. Kormos: My problem is that lawyers get to elect their regulators, to wit, the benchers. Why shouldn't paralegals get to elect their regulators, to wit, benchers, in the same manner that lawyers can elect benchers? That just seems so fair. Is it not a fair proposal?

Mr. Kostyniuk: It might come with time. Again the question is, can you do it immediately? They don't have an association currently that would accept all of them. You have various associations with a few members each. I saw on your list of people speaking earlier, plus people speaking today, if I recognize the names correctly, disbarred lawyers, individuals who are self-interested rather than looking after their group as a whole. If there are 1,100 of them, we first must question whether they will be among those 1,100, whether the 1,100 will have the ability to self-govern at all. Lawyers have because of the history, because of the expertise that's developed at the law society. At this early stage I would have to suggest that the paralegals would not have that ability.

0930

Mr. Kormos: I suppose the reason why is because the law society determines who can belong to the law society as a lawyer. You have to meet the prerequisites that are determined by the law society. The legislation as

drafted—and the government doesn't seem to have much interest in the legislation anymore. Take a look at the sparse numbers of government members here in the committee.

The government has a process whereby people are licensed, which is tantamount to membership, so lawyers are going to be licensed, right, Mr. Runciman? They get to be members. Paralegals are going to be licensed but they don't get to be members. It seems to me that the licensing is the standard and the prerequisite for membership, and membership does have its benefits, as they say on that television ad. But some people are going to benefit more than others because some people aren't going to be allowed to be members.

Why is that fair? Doesn't it seem to you that that would be an interesting way of encouraging paralegals to join in this proposal, if they were going to have some benefits, to wit, membership and the ability to elect benchers just like lawyers do?

Mr. Kostyniuk: The benefits of their membership will be that they're allowed to continue to do business, that they're allowed to provide some legal services to the public. But will they be allowed to provide the full range? Will they be allowed to practise law? The answer should be no. You mention fairness. The paramount question of fairness must be to the people of Ontario, must be whether they are currently protected against lawyers by the law society. I submit that the answer is clearly yes. The law society does an exceptional job of governing lawyers, not necessarily protecting lawyers or on behalf of lawyers but certainly on behalf of the public.

When paralegals enter into that, it would be my suggestion that you need to have them regulated. You need to have them registered. You have to protect the public.

The Chair: Thank you very much. The government side, Ms. Van Bommel.

Mrs. Van Bommel: Thank you very much for your presentation. There's just something Mr. Kormos said earlier. I'm not a lawyer so I hadn't even given it a thought, but he said that regulated lawyers are members of the law society. Are there lawyers who are not members of the law society?

Mr. Kostyniuk: No. You must be a member of the law society, you must have errors and omissions insurance and you must pay into the compensation fund. It's all there to protect the public.

Mrs. Van Bommel: In your presentation you talk about educating the public about the difference between lawyers and paralegals. Has anything been done in the past to make sure the public does understand? I think there's a real perception out there that a lot of this is based on cost of the service. Has the law society done anything in the past to help the public understand the differences in the services that are provided by each of the professions?

Mr. Kostyniuk: Not to any great extent, I would concede. The public over the years certainly knows what lawyers do. They know to see the lawyer if they've had

an injury or if they need a real estate transaction or if they need a will. They've learned over the years, whether that's by the lawyer or the law firm advertising. You'll see on the back of the Yellow Pages various law firms that advertise what their preferred area of practice is, if they have a certified specialty and if they're therefore educated and able to provide those services to the public—and if the public is protected. That's what we have to look at here.

Paralegals have done it to some limited extent, whether it's their vehicle driving by with a sign on the side saying that they provide services for traffic violations—you do have the self-serving ads. Whether the associations themselves have done it: no, not to any great extent.

Mrs. Van Bommel: Thank you.

The Chair: Thank you, Mr. Kostyniuk, for your presentation.

SENECA COLLEGE
SCHOOL OF LEGAL AND PUBLIC
ADMINISTRATION

The Chair: The next presentation is from the Seneca College School of Legal and Public Administration. Good morning, ladies. If I can have you identify yourselves for Hansard, and you may begin.

Ms. Linda Pasternak: Good morning, Mr. Chair and honourable members, my name is Linda Pasternak. I'm the legal programs coordinator at Seneca College, a professor and also a member in good standing of the Law Society of Upper Canada.

Ms. Wanda Forsythe: Good morning. My name is Wanda Forsythe. I am chair of the school of legal and public administration, and I as well am a member in good standing of the law society.

We would just like to address you this morning on the topic of education of paralegals. The Seneca College School of Legal and Public Administration is a leader in the provision of skills-based training for independent paralegals. The former chair of the school, Eva Ligeti, was a member of the advisory committee to the Ianni Task Force on Paralegals, and Linda Pasternak, my colleague, has taken part in the reviews of paralegal regulation and education carried out by the provincial Attorney General in 1998, by the law society in 1999-2000, and by the Honourable Mr. Justice Peter deC. Cory in 2000. She is currently representing Seneca College on the law society's college advisory group.

The school of legal and public administration, which is the largest of its kind in Canada, has a wealth of experience in developing and delivering courses in the legal and regulatory compliance areas. The full-time faculty includes 13 lawyers as well as individuals with a great deal of expertise in the legal field. Other lawyers, experts and specialists are hired as part-time faculty. I would also note that this program has counterparts in the continuing education faculty of the college as well as the full time.

The school was the first in the province to offer a court and tribunal agent diploma program in 1994. It is a four-semester program and is delivered over two years. There is also an accelerated three-semester version designed for individuals who already have a university degree or college diploma; therefore they don't need English and general education subjects and they can take all of the professional subjects within 12 months.

In designing the curriculum, the school's faculty used the core competencies model to identify the basic knowledge and skills required of an independent paralegal and to then establish individual subjects that enable students to acquire these competencies. There are two areas of core competencies which independent paralegals need in order to practise proficiently. They must acquire generic skills as well as specific technical skills in their desired areas of practice. Sound generic skills are a crucial base on which specific technical skills can be built. Generic skills include analytical skills, English-language proficiency in both written and oral communications, legal research abilities, practice management expertise and a thorough grounding in appropriate professional conduct and ethics. Specific technical skills cover the prescribed areas of practice.

It should be noted that Seneca has been scrupulous in providing training in the paralegal area only in those areas where paralegals are permitted to practise.

The program also includes an unpaid field placement component. It is approximately four weeks and that gives our students valuable work experience and potential employer contacts.

The program has been in operation for 11 years and is a benchmark in the province. It can be readily modified to fit into a new regulatory framework for paralegals. We have attached fact sheets that describe the regular and accelerated versions of the program.

We have been, as I say, working with various groups over the years, including the law society at the moment, and we are quite prepared to make whatever adjustments are necessary in order to build a curriculum that would fulfill the requirements of any regulations that are put into practice.

The Chair: Thank you. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, Chair. How much time?

The Chair: About eight minutes each.

0940

Mr. Kormos: Thank you kindly. I can harken back not that long ago to the point in time when social workers wanted the Legislature to enact legislation that created a college of social workers. I recall community college graduates of the social service programs being angry that they were being excluded from a college of social workers because the BSW/MSW types didn't think there was room for these social service graduates. Eventually, the differences were reconciled and social service graduates were pleased to be a part of that college of social work—enthusiastic about it. And while there were different roles for different people, depending upon their educational

background, they were all members of the same college—members, right? Quite frankly, the colleges advocated for them, and that was the attractive thing about it. Yes, they were part of, they were a member of, that college.

You were here when I was talking to the spokesperson for the Toronto Lawyers Association. For the life of me—and maybe I just don't get it—I don't understand why lawyers, who are regulated, are members of the law society and can vote and elect things like benchers, and paralegals, who, if this bill passes, will be regulated by the law society, can't be members of the law society and be able to vote. Do you understand why?

Ms. Pasternak: Sir, I don't understand why, as the scheme gets started and goes along, there could not be an associate level membership or an affiliation so that they could be voting on the issues that were relevant to them.

Mr. Kormos: I agree with you.

Ms. Pasternak: I certainly see no problem in the eventual bylaws with the law society of doing something like that.

Mr. Kormos: Because another area of great interest in the community college community is dental hygienists. You folks do a lot of educating, very good educating. I know that program well and I know its graduates well. Dental hygienists, Chair, of course in the province of Ontario can't work independently of a dentist, can they?

Ms. Forsythe: That's right.

Mr. Kormos: Do you understand what I'm saying, Chair? A dental hygienist has to work with the dentist. While there have been movements and lobbying to allow them to operate on a stand-alone basis, that hasn't changed, yet dental hygienists have their own regulatory body. Dental hygienists can only work with dentists, but they're not regulated by the dentists' regulatory body; they're regulated by the dental hygienists' regulatory body. Is that irrational?

Ms. Forsythe: I'm not an expert in dentistry, and I don't know—

Mr. Kormos: Of course not. Neither am I.

Ms. Forsythe: —where the numbers are, but I would support what my colleague said. There could be such a thing, I would imagine, as an associate membership. For instance, my colleague and I are members of the law society, but we're not practising, so we don't pay the level of insurance premiums that practising members do. But we have a role; we have a specific type of membership. I would imagine that that could be arranged.

Our focus is on—we're ready to do whatever is asked of us by the regulations. We would just like to point out that the colleges are well prepared to educate paralegals. College education is so much less expensive than university, let alone law school. Colleges are very accessible, and there are many of them throughout the province. I would think it would be a good avenue for the education of paralegals to use the well-established college system.

Mr. Kormos: I agree. And I have a soft spot for colleges. Niagara College was the first school that ever

let me graduate in the province of Ontario. It's true. It's a true story. So I've always been grateful to them. It's just that the problem here is that all of us—I think everybody in this Legislature—think that paralegals should be regulated. Paralegals think that paralegals should be regulated. The problem is that we haven't had any paralegals come to this committee, other than Mr. Dray, who's a bencher, and say, "Yes, we think we should be regulated by the law society." And there's a legitimacy problem, therefore.

Ms. Pasternak: I think part of the problem, why you haven't had paralegals who support the bill, is that they're quite happy with the bill, so it's the paralegals who do not support the bill who are coming forward. If they're happy with the bill, they think it's just going to go through, and they see no point in coming to oppose the bill. We have many, many graduates who are practising paralegals, and anecdotally, they have been absolutely supportive of the bill.

Mr. Kormos: Then get them here, honestly. The government and Ms. Weir are anxious and eager to have these people come forward. I'm anxious and eager to have them come forward. Get these people out here, for Pete's sake, because we haven't heard from them yet, and unless there's an acceptance of the role of the law society by these paralegals, it's going to be very, very difficult for people to support the proposition. We've got to hear from them.

Good grief, Mr. Zimmer damned near had kittens last week when he thought he had the silver bullets lined up and they didn't deliver. I thought he was going to pass out. The levels of stress in the Attorney General's office have risen over the course of the last week. Please, get these people here. We've got to do something to accommodate these people, Chair. I don't want these people to be excluded from the hearings. We've got to hear from paralegals who support the proposition. Thank you, folks.

The Chair: Thank you. The government side.

Mrs. Van Bommel: Thank you for your presentation. I'm just looking at your course outline and notice that there are quite a few areas of legal issues in it, including small claims, motor vehicle, refugee law, landlord and tenant, consumer and commercial. Is this a standardized course that any student could find at most community colleges that would offer this type or is yours tailored to what you feel is required to provide a certain diploma?

Ms. Pasternak: At the present time, each college has its own curriculum. Part of the college advisory group that the law society has put together are members of all the major colleges, both public and private. They're certainly looking at making sure that all the curriculum that is being offered by the colleges is fairly similar, that we only teach the things that paralegals are allowed, by law, to practise in.

Mrs. Van Bommel: We had one deputation yesterday where they talked about eventually the possibility of even a four-year program.

Ms. Pasternak: Humber College does have an applied degree program, and that's a specific program for people

who may want to go on to other degrees when they're finished. But we've been around for 11 years. We have found that the two-year program, with the combination of both generic and technical skills, has worked very well. Luckily, to this point, most of our grads who have made decisions to go into independent practice have stayed in the areas that are allowed and have been extremely successful, so we do believe that the community college model is an excellent one to follow. The colleges that don't currently offer it, it certainly is something that they have the expertise in doing.

Ms. Forsythe: I would just like to point out that applied degrees in the college system are still fairly rare. They're mostly in the greater Toronto area: Seneca and Humber. We don't have an applied degree in this area, but we have other applied degrees. But they are very costly for the smaller colleges to develop, and I think if we went with an applied degree model, it would really cut back on the accessibility because there aren't that many applied degrees.

Mrs. Van Bommel: Thank you.

Mr. Runciman: Thank you for being here. I am somewhat curious about your submission, and I appreciate your making the time to be here. In your opening comments and in the written material, you mentioned Eva Ligeti, a former chair of your school, being a member of the Ianni task force. You know, the Ianni task force, as well as Justice Peter Cory, both recommended self-regulation of paralegals. I'm wondering why you felt compelled, obligated, to suggest in the last paragraph of your submission that you support regulation by the Law Society of Upper Canada. Why did you feel obligated to say that, and what's your qualification to say that—I guess your experience—based on the fact that your former chair was part of a task force that recommended something completely different?

Ms. Pasternak: Frankly, I've been involved in this for about 11 years and have had the privilege of meeting many fine paralegals, but unfortunately, at this stage of the game, the paralegal groups have not been able to, for lack of better words, get their act together to come to a consensus of who should be regulators. There has been a lot of infighting etc., particularly concerning the areas of the scope of practice. I am still not sure that at this point there is a leading group of paralegals.

0950

Mr. Dray yesterday mentioned to you about the Professional Paralegal Association of Ontario, which, after the Cory report, seemed to be the umbrella organization that could deal with self-regulation. Unfortunately it imploded, and to date there has not been a paralegal organization that speaks for all the different factions. There are some excellent groups and excellent, excellent people, but as of today, I think that the law society certainly is the best opportunity for regulation and is a professional regulator.

Mr. Runciman: That seems to be an opinion widely held by lawyers, I have to say, certainly—as Mr. Kormos pointed out—not by paralegals who have been appearing

before us. You've suggested that they're not coming forward because they support it. We heard the suggestion yesterday by a number of witnesses that they feel intimidated, that they'll be discriminated against if they do appear before us. I know that in once instance, we're looking into that allegation.

I share Mr. Kormos's view. If those people are out there, we would encourage them to come forward and make their views known. I'm not sure why they would feel that they shouldn't come forward. Hopefully, you'll do your part in encouraging them to do so.

The Chair: Thank you for appearing before the committee today.

ONTARIO MEDICAL ASSOCIATION

The Chair: The next presentation is from the Ontario Medical Association. I believe we have Dr. David Bach, who is the president, and Jim Simpson, legal counsel. Good morning. You may begin your presentation.

Dr. David Bach: Good morning, Mr. Chair, members of the committee. I am Dr. David Bach. I'm a radiologist at the London Health Sciences Centre, and I'm the president of the Ontario Medical Association, which, as you know, is distinct from the Canadian Medical Association. I am joined today by Mr. Jim Simpson, general counsel of the Ontario Medical Association.

The OMA is the professional association representing Ontario's 27,000 physicians. For over 125 years, the OMA has advocated for measures to improve the health of Ontarians.

We are here today to speak to you about the provisions of the bill that deal with periodic payments, or what are commonly called "structured settlements" in medical liability cases. We understand that decisions of Ontario courts have, to a significant degree, veered away from the original intention of the existing section 116 of the Courts of Justice Act. Accordingly, we are very pleased that Bill 14 has been introduced to reaffirm the original legislative purpose, namely that periodic payments should be the preferred means of compensating those who are harmed as a result of negligent medical care.

The committee staff has received our written submission, which describes the substantive advantages provided by the proposed legislation. In our brief remarks today, we wish to build on three key themes: (1) Ontario's comprehensive health care system funds medical malpractice protection; (2) structured settlements are better than lump sum payments; and (3) Ontario could provide more health care services if it passes these provisions.

I'll start with (1) and speak about the comprehensive health care system that we have. Our system provides physician services, hospital services, laboratory services, independent health facility services, nursing services and the services of many other health care providers, as well as malpractice protection. A crucial component of the system is the malpractice protection system. This compensates the small percentage of Ontarians who unfor-

tunately suffer harm in the health care system. The Ontario health care system could not operate without this protection.

Ontario funds the physician malpractice protection provided by the CMPA, the Canadian Medical Protective Association. Ontario funds malpractice protection coverage for hospitals through the global budget process that the Ministry of Health and Long-Term Care provides. The significant majority of Ontario hospitals receive their malpractice protection from the Healthcare Insurance Reciprocal of Canada.

The second area I want to talk about is structured settlements, which are better than lump sum payments. Others have spoken to you already to explain how structured settlements work and the advantages of them. In particular, both the CMPA and HIROC have emphasized the following points:

Structured settlements protect patients from two risks; namely, the risk of unanticipated long life expectancies and the risk of poor investment choices. Both of these risks would be borne by the insurance company. This guarantees the patient will have the money necessary in the future to buy the health care services that he or she needs.

The second point is that structured settlements are less expensive than lump sum payments. Structured settlements can provide exactly the same future income stream to injured patients as lump sum payments, at less cost. The cost savings result from the savings in the income tax gross-up and investment management fees. The CMPA has estimated its cost savings would be between \$2.7 million and \$5.1 million a year. Mr. Michael Boyce of HIROC, in his oral submission last Thursday, estimated the cost savings to it would be at least \$1 million a year. Hence, the total savings for malpractice protection would be between \$2.7 million and \$6.1 million annually.

Our third point is that Ontario could provide more health care services with this money. As you know, the OMA negotiates two framework agreements with the Ontario Ministry of Health and Long-Term Care. The first is a physician services agreement, which we call the framework agreement, and the second is the CMPA malpractice protection agreement.

The physician services agreement provides the funding for all physician services in Ontario. In the negotiation of this agreement, the OMA and the ministry agree on not only the price of physician services, but also the anticipated volume of services. The current agreement covers the four-year period from 2004 to 2008.

The CMPA malpractice protection agreement is also a four-year agreement. In it, the government agrees to the funding it will provide for CMPA fee reimbursement for Ontario physicians.

The Ministry of Health and Long-Term Care emphasizes in both these negotiations that it has only so much money for health care. Every extra dollar it spends on one program is one less dollar it has for another program. Every dollar it saves on malpractice protection is a

dollar it can spend on providing health care. If the ministry could save \$3.7 million to \$6.1 million a year on malpractice protection, it could provide significantly more health care to Ontarians. It could provide more hospital services. It could purchase more CT and MRI scanners. It could hire more nurses. It could pay for more medical services.

The OMA and the Ministry of Health and Long-Term Care have many times discussed ways to increase the efficiency of the Ontario health care system. In 1997, we formed the physician services committee to oversee and coordinate the provision of medical services in Ontario. In 2000, we formed, with the CMPA, the medical malpractice coverage committee to oversee the provision of medical malpractice protection.

This committee recommended in September 2001 that structured settlements be the preferred method for compensating future care costs in medical malpractice damage claims. In February 2003, the ministry agreed in a memorandum of understanding with the OMA to recommend to the Ontario government that it "seriously consider introducing legislation" to implement the recommendations of the MMCC.

Let me close by saying that we have worked hard with the Ministry of Health and Long-Term Care and many others for many years to see the introduction of this structured settlements reform. We believe that this reform is good for Ontario patients, good for the medical protection system and good for the health care system in this province. This is sound social policy that makes financial sense. We applaud the government for including the structured settlements reform in Bill 14. We hope you will recommend its swift passage.

Mr. Chair, thank you again for the opportunity to present the OMA's comments on the provisions in Bill 14 to amend section 116 of the Courts of Justice Act. Mr. Simpson and I would be pleased to answer your questions.

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The Vice-Chair (Mrs. Maria Van Bommel): Thank you, Dr. Bach and Mr. Simpson. We have eight minutes on each side, and we start with the government.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Thanks very much for your presentation. I'm pleased to hear that you think we're on the right track. The bill's going to need some improvements; we know that. We're hearing from a lot of parties. The OMA is a very, very important stakeholder. You've had a lot of experience, and we appreciate your sharing it this morning.

Dr. Bach: Thank you.

The Vice-Chair: Mr. Runciman.

Mr. Runciman: I have no questions either. I do appreciate hearing something other than paralegal testimony. It's refreshing. Your submission is helpful as we go forward. I can only indicate that your request for a swift passage is probably going to fall upon not completely deaf ears, but the fact that the government has chosen to throw a whole range of very controversial

issues into this legislation is going to make it difficult for us to rubber-stamp any initiative contained in this bill. They all have to receive appropriate scrutiny and, in some cases, I think, significant debate. This is just part of that process.

Once again, thank you for being here. I appreciate it very much.

Dr. Bach: Thank you.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, gentlemen, very much. I understand your position, and I understand the interests that drive it. I'm appreciative of the fact that people have focused on schedule A, because I was wary that it was going to be lost in the discussion, most of the focus being on the paralegal regulation.

Mr. Runciman, of course, speaks to the problem when you have an omnibus bill of this sort, where you've got some serious legislation in here that will affect the standards of evidence upon which you can base a conviction at the provincial offences level.

You've got JP reform, which is very important and which is getting short shrift in terms of the discussion here, regrettably, although I know that there are some people with legitimate contributions to make who have asked to be on the waiting list with respect to discussion around JP reform. And, of course, there's the Limitations Act amendment, which is an interesting one as well.

I was disappointed, because the CMPA made a presentation here and referenced Judge Coulter Osborne and his recommendations from back in 1987, his discussion of no-fault insurance. It was the paper that the Peterson government used to justify their imposition of no-fault insurance here in Ontario. We know what kind of disaster that has been.

Unfortunately—but with gratitude to Ms. Drent, because Ms. Drent pulled the section—I suppose lawyers would say it was obiter on the part of Judge Osborne, where he talked about structured settlement. He laid out pros and cons. He was quite fair, quite frankly, in terms of how he spoke of his preference for structured settlements, but it wasn't the ringing endorsement that the CMPA gave. We've all got a copy of that.

My question is this: We had a young man here last week, Mr. Kolody, from Ottawa, who spoke very articulately about the need to have structured benefits indexed, based not on inflation but on the CPI; at least that's the manner in which I understood his submission. It seemed like a subtle point, but when he talked about the impact, it was significant. So I appreciate your enthusiasm for schedule A and the new section 116, but you've got to understand that there are plaintiffs' lawyers who have concerns about it. Now, is it self-interest on the part of those lawyers? Because plaintiffs' lawyers—and I've spoken with one so far—suggest that there would be a preference for discretion. Why shouldn't the section read “may” instead of “shall”?

Dr. Bach: We think that the advantages of this are clear to everybody. In the past, the plaintiffs have not taken advantage of it, and it's not specifically clear to us

why. We're concerned that if they're allowed the discretion, they again will not take advantage of this. We think the need is overwhelming for the province and for the patients to do what's right. It's better for the patients, it's better for the health care system, and it saves money.

Mr. Kormos: I have no doubt that it saves money.

Mr. Jim Simpson: If I may help on this point, too, sir, the courts, I understand, have developed a body of jurisdiction interpreting section 116, which is to the effect that the court may not order a structured settlement unless the plaintiff consents. So the point of this is to create the presumption in favour of structured settlements, and the courts have clearly stated that that will not be possible without the legislative direction, for example, contained in this bill.

Mr. Kormos: Perhaps Mr. Fenson could help us in terms of getting us some material as to the impact of the word “may,” as compared to “shall.”

Look, I have no doubt that this will save money, and nobody is opposed to that fundamental premise. My concern, then, is at whose expense?

The section talks about inflation-proofing to the extent that the market makes it readily possible. That's off the top of my head. Why wouldn't there be a specific instruction, then, to a judge, to a court, that a structured settlement “shall” be indexed in accordance with the use of the CPI as a guide? Why would that be unacceptable? That would seem oh, so fair.

Mr. Jim Simpson: The section you refer to states the annuity must include protection from inflation and, as you say, sir, to the degree reasonably available in the market for such annuities. I understood the reason the last half of the section is there is to not tie the hands of the courts if and when the defendant goes out to buy this annuity in the market. The court can't direct, of course, that an annuity be awarded that is not commercially available in the market. I understood those words were just to give some flexibility.

Mr. Kormos: And that's fair enough. Would you have an objection to the section specifically indicating that a structured settlement “shall” be indexed based on the CPI?

Mr. Jim Simpson: No, and in fact I believe the current provisions of the rules of civil procedure make reference to the consumer price index as a measure under one of its rules for inflation in Ontario. I'm not an expert on annuities, but I would think quantifying in the statute the measure of inflation to be used might be of assistance to the courts.

Mr. Kormos: I appreciate that comment on your part. Thank you, gentlemen.

The Chair: Thank you for your presentation.

I believe the next group is not here yet, so we're going to be having a recess until 10:30.

The committee recessed from 1007 to 1035.

The Chair: Welcome back. I'd just like to point out to members that in front of them is a research paper by Ms. Margaret Drent, as a result of a request by Mr. Kormos. That should be in front of you.

CLAIMS NEGOTIATIONS INC.

The Chair: The next presentation is Mr. Ricardo Francis. He's a chief negotiator with Claims Negotiations Inc. Good morning, sir. You may begin.

Mr. Ricardo Francis: Good morning. I thank you for the opportunity. As you already know, I am Ricardo Francis. I am grateful for the opportunity to make my submission on this particular bill, Bill 14.

Bill 14, the Access to Justice Act, is now commonly referred to and reported as the bill to regulate paralegals. Every news release I've seen and heard indicates that that is the purpose of this bill. I am now wondering what the government's real intention is or if there is an ulterior motive to make justice more inaccessible, inefficient and ineffective while consumers' rights are breached and violated.

In my opinion the bill does not, in any given capacity, clearly state its purpose and objective. It is cumbersome, unreasonable, illogical, not user-friendly or rights-friendly. It appears as though this bill's real purpose is to make the justice system more inaccessible and unaffordable, therefore it should be renamed the inaccessibility to justice act. It is not only trampling on the rights and freedoms of consumers but further monopolizing an already existing membership club to determine how and when justice should be accessed, and by whom. Finally, who gets to represent consumers when they require legal services?

It is currently believed that the fees in the courts alone deter consumers from standing up for their rights by pursuing legal action when warranted. Also, just to photocopy a single page in the court is \$1, when it can be done at a private establishment for as little as 10 cents. The cost of justice is already too high, and is getting higher. If this bill were to pass, it would further increase cost to the consumer.

It certainly appears that the championing of this particular bill is to serve the purpose of the law society and individual lawyers, in particular those who believe that agents, paralegals, counsel and other legal consultants are taking away their business. The law society has a monopoly on legal services in this province and they want to further monopolize their presence in the marketplace, where justice will be dispensed based upon a client's ability to pay. In essence, there will be only one shop for your legal services. A member of the law society will provide it.

There appear to be many special-interest groups with respect to this bill, namely the Law Society of Upper Canada, the Paralegal Society of Ontario, the Canadian Society of Immigration Consultants and other organizations with similar scope and agendas. Each and every one proposes their reasons for doing so. However, it clearly appears that their interests and agendas are more important than doing what is right and proper for consumers—the consumers of legal services.

The man on the street is interested in affordable and results-oriented services, not necessarily who delivers it. Consumers want real choices, not choices imposed by

governments that create monopolies to render these services. I personally do not like monopolies of any kind and firmly believe in individual choices. The consumer is king and should decide what constitutes proper legal services. Each and every one of us wants the freedom to choose where we get our legal services.

I am also very skeptical of self-regulatory organizations, whether they are given legitimacy grounded in statutes and/or are registered under the Income Tax Act, because quite often they are established to meet the agendas and purposes of those in control.

Sixteen years ago a Task Force on Paralegals, which I'm holding up here, commissioned by Dr. Ron Ianni of the University of Windsor, made some recommendations which eventually led to Bill 42, which was never passed. Some of these recommendations were very meaningful, and politically and legally acceptable. Today we are revisiting this issue with a new bill, Bill 14.

It was reported then by the task force that only 13% of the public had complaints against paralegals and/or those offering legal services, while 87% of the complaints came from lawyers. It is very likely that nothing much has changed with respect to this particular fact and reality. So why are we revisiting this issue? It was the political party of this government's stripe that was in office at the time. The public is inclined to believe that they are the only ones interested in and willing to cave to political pressure from a special-interest group to compromise and infringe on the public's right to legal services free of a monopoly arrangement.

1040

This 1990 Task Force on Paralegals discovered and reported that legal services providers fulfilled a need in the marketplace for the consumer. The consumer, for the most part, was very appreciative and accepting of the legal services provided by non-lawyers, who referred to themselves by whatever name they chose to call themselves, be it an agent, a counsel, since there aren't any specific arrangements in the Law Society Act.

The government and this committee need to properly demonstrate to the public and other legal services providers the real facts behind this current bill and why Bill 42 is different than Bill 14. Or is it an Attorney General who is interested in history, as opposed to doing what is right for the public? This bill needs to be shelved and new considerations and arrangements that are more practical and acceptable need to be given purpose and reason.

For instance, my company provides different services to the public, and I have a network of lawyers that I refer clients to and vice versa. They refer business to me; I refer business to them. So I have that component in my arrangement as a person who provides this type of service. I welcome everyone, and those I cannot assist with finding meaningful and sustainable solutions I refer accordingly to someone who can. I also act in the capacity as a facilitator between a client and their lawyer since some clients are very uncomfortable dealing with lawyers, for there is a great distrust, that lawyers in

general are not to be trusted and all they want is your money. I have clients who are very established in their own right: a decent and stable job, home and family. However, when it comes to questions of politics or law, they are simply very naive and can be taken advantage of quite easily.

I should and must remind the committee at this time that there are significant breaches of law committed by lawyers that are often reported in the media. Just yesterday I was reading that. Lawyers are committing more offences, which is the reason why the public at large does not trust lawyers. It would appear reasonable to believe that they are protected by provisions in the Law Society Act.

Before concluding, I must say that I recognize that Ontario has always been a conservative jurisdiction within the law tradition, so we are dealing with a fairly conservative system here that needs to take a good, hard look at the following: Rule 15, representation by solicitor, where a solicitor is required in the Rules of Civil Procedure, and it states—but before I proceed, I must say to you that I do go to court from time to time to represent lawyers as an agent in the Superior Court of Justice, but because of this particular rule, I am not allowed in the Superior Court of Justice unless the judge so grants me that permission. I will enlighten you about my position on this particular issue.

“15.01(1) A party to a proceeding who is under disability or acts in a representative capacity shall be represented by a solicitor.

“(2) A party to a proceeding that is a corporation shall be represented by a solicitor, except with leave of the court.

“(3) Any other party to a proceeding may act in person or be represented by a solicitor.”

While I agree in principle with sub-rules (1) and (2), I find sub-rule (3) discriminatory, and I'm going to tell you why. While it gives the litigant the right to be self-represented and while it gives the right to retain a solicitor, two very basic assumptions are made in this section: It assumes that the litigant has the ability—of course, financial ability—to retain counsel; and in the alternative, it assumes that the litigant has the ability to represent himself or herself.

This section, while it gives the litigant the right to represent himself or herself, also takes away from that person the right to be properly represented in that the person might not have the financial ability to retain a lawyer and might not have the legal ability to represent himself or herself, not being sophisticated in terms of the wherewithal in terms of legalities and the politics and so on that govern the court system, so to speak. This in effect takes away the third way, that the litigant can call upon a substitute representative, namely an agent or a paralegal who may, in a lot more ways, represent the litigant and may have the same function as a lawyer in terms of ability. You're not saying that you're a barrister/solicitor—it's against the law under the Law Society Act—but in the sense that you have that innate

quality, you have the knowledge base, that you can act to represent them in that capacity. In a sense, this section denies representation and denies the litigant the ability to litigate, and not the third way. No matter how much merit the litigant has, there is no lawyer and/or the ability to represent himself or herself. In other words, you don't understand the issue, you're not disabled, so therefore you have no one to come and rescue you.

There are many clients that have cases that are more than \$10,000 and less than \$25,000. However, when the matter goes to Small Claims Court, they can only litigate for the maximum of \$10,000 and abandon the excess. Often, as a person who represents people, because most of the work I do is litigation work, I have to abandon the excess because a client refuses to take it to Superior Court, the higher court, where they may end up having to pay a lawyer \$5,000 to represent them on a \$20,000 file. Of course, judgment money is no money, so there is no guarantee that you're going to get your money. So the only solution is to increase it from \$10,000 to \$25,000. This is an injustice that is institutionalized and violates the rights of the litigant for the full amount. The litigant should be able to litigate for a maximum of up to \$25,000 in Small Claims Court, as is legally allowed in other jurisdictions in Canada—in Alberta, Nova Scotia and British Columbia, to my knowledge; if I am incorrect, you can certainly correct me—based upon the information I've been fed.

In concluding, it is true that standards and regulations are necessary and worthwhile to protect the public at large—consumers, that is—in the retaining of legal services. However, this bill is simply going to further monopolize the existing legal system and compromise and infringe on consumers' rights to free choice. This bill has more to do with the protection of special-interest groups that have consumed the political will. After all, politicians make laws. Lobbying goes on. Whose interest is met?

That being said, I wish to make the following recommendations:

Please shelve this bill, for it further monopolizes the legal services in the hands of a membership club. It does not do justice for the consumer but furthers the interest of those special interests.

Review the Task Force on Paralegals of 1990, which I have in my hand here, commissioned by Dr. Ron Ianni, and examine the recommendations reported before proceeding with a new bill. Perhaps the government should not regulate non-lawyers, as some other jurisdictions in the world. I've been advised that in some states in the United States, as well as in Britain, paralegals or law clerks, what have you, are not regulated.

It is more accepting politically and legally to have a standing legislation dealing with non-lawyers offering legal services administered by the government, namely the Ministry of Government Services, as it is known today—the former Ministry of Consumer Relations, as you know—and not an administrative agency or a self-regulatory organization, which I'm very leery of because they have their own political agendas and interests.

If and when legislation is passed, will those non-lawyers or non-barristers/non-solicitors, as defined in the Law Society Act, be able to access legal aid for their clients? So if you are going to regulate legal services providers, they should be able to go to the public trough and access representation. It is only fair to have access to funds to represent these particular parties.

Review and examine rule 15 of the rules of civil procedure and make it non-discriminatory for litigants and those non-lawyers representing them.

Amend the Courts of Justice Act to increase the legal maximum allowed in Small Claims Court from \$10,000 to \$25,000.

That is my submission. I'm much obliged. I welcome your questions.

The Chair: Thank you very much for your submission. We'll start—about four minutes each—with the official opposition.

1050

Mr. Runciman: Thanks, Mr. Francis, for taking the time to make a submission. We've been hearing a lot of this in the last of couple of days. There was a witness before you from Seneca College who suggested that a lot of paralegals are very supportive of moving ahead with the Law Society of Upper Canada as the regulator. We haven't heard any testimony except from one individual who is also a benchers. I'm wondering if that's the sense you're getting from your colleagues. Is there widespread support, and those people who support it in your profession are simply not coming forward because they agree with it and don't feel they have any need to come forward? That was the testimony we heard this morning, but that hasn't been our experience over the last number of days.

Mr. Francis: First of all, I personally have no problem with regulations and standards. I firmly believe in regulations and standards provided they are adequately, efficiently, effectively implemented for the purpose of the people they serve, the consumers. I believe that if you put a jackal to look after the blood bank, you're going to have a problem.

You certainly don't want to have two monopolies. You don't want to have a paralegal society and you don't want to have the law society—perhaps that will bring about evenness in terms of the scales of justice. I don't know.

I am for regulations, but regulations that are government-controlled, like I indicated in my submission, under the ministry of consumer services, because I'm very leery of non-profit organizations. I can give you examples of organizations such as OREA, the Ontario Real Estate Association, which is a monopoly. You have people in Ontario teaching English as a second language who issue certificates that aren't entrenched or grounded in law. You cannot get a job with the school board, as an example, unless you have a certificate. So you don't want to end up in a situation whereby you have a certain organization—whether it be a paralegal society—that is implementing and instituting rules, because somewhere

along the line I think paralegals will be squeezed out the door if it's the law society that is representing them. Personally, I don't like the word "paralegal." That is why I call myself a chief negotiator, because I think a paralegal is, more or less, a half lawyer.

Mr. Runciman: How did you get qualified to perform?

Mr. Francis: Well, myself. I am actually politically trained. I have been political all my life. I'm from an established political family in the Caribbean. I studied law in England for a year. I am pretty much entrenched in politics and I am also a political candidate in this year's municipal elections. So I'm well informed and well read.

The Chair: I just want to point out that there's about five minutes each, so if you're finished, Mr. Runciman?

Mr. Runciman: Well, I really didn't get a response to my initial query and I'm not sure what kind of contact you have with others in your profession.

Mr. Francis: More or less, there are individuals I deal with in this line of work. Most individuals I deal with don't do exactly what I do, because most of the work I do is litigation. Most of the individuals I deal with are lawyers and they respect my capacity and my capability as a person, because we have discussions and we can relate. But I don't know too many individuals who do exactly what I do. Perhaps some do land conveyance and things like that, but that's as far as it goes. But in terms of litigation, no.

Mr. Kormos: Thank you for the written submission, which meant that I could read it, having had to come in and out of here, with my apologies, during the course of your submission. This is being broadcast on the legislative channel—

Mr. Francis: Yes, I'm aware.

Mr. Kormos: —so tout yourself. You're running in Toronto?

Mr. Francis: No, I'm running in ward 5 in the city of Mississauga.

Mr. Kormos: Ward 5, city of Mississauga, for city council?

Mr. Francis: That's correct, yes.

Mr. Kormos: Do you have a phone number where people can contact you?

Mr. Francis: Oh, yes, and I do have a political website.

Mr. Kormos: Go ahead. What's your website?

Mr. Francis: It's ricardofrancis.com.

Mr. Kormos: And your phone number?

Mr. Francis: It's 905-671-9349.

Mr. Kormos: Thank you, sir.

Mr. Francis: I thank you for that.

Interjection.

Mr. Francis: At this stage of the game I'm politically neutral here because I have the public's interests at heart where this matter is concerned.

Mr. McMeekin: Of course. We feel the same way.

Mr. Francis: Yes. It's not political.

The Chair: Any questions, comments from the government side?

Mrs. Van Bommel: Thank you for your presentation. In your document, you say it would appear reasonable to believe that the law society protects lawyers who are not acting in the best interest of their clients, to put it in a kind way, I suppose. This morning we also had a deputation from a lawyer who said to us that the purpose of the law society is to act in terms of taking a disciplinary role with lawyers who have committed offences against their practice and against their clients. Is that your understanding? Do you feel that that's the role of the law society? You seem to be of the impression that the law society's role is to protect lawyers from the consumer.

Mr. Francis: Well, I do have a copy of the Law Society Act right here. I came fully prepared. I believe, based upon the reports that I've read in the newspaper—because I'm a consumer of information. I happen to read a couple of newspapers on a daily basis. In section 49.1, I believe it is, if a lawyer is under investigation, the law society gets involved, and when the law society gets involved—and correct me if you have different information than what I'm relating—the police cannot go and get themselves involved in any form of investigation, whether it be a client, whether it be to do with mortgage fraud, money laundering. Currently, as I've read in the press—and I'm only reading this in the press, just like every person on the street—75 lawyers are under investigation by the law society. Recently a lawyer was sent to jail for money laundering.

Mrs. Van Bommel: So the law society is taking this action against the lawyers?

Mr. Francis: Yes. I understand what you're saying, but I'm inclined to believe that just like in a business organization, there is more that goes on at the bottom than the top knows. In other words, there could be a lot of consumers who are being taken advantage of by lawyers, but whether it be for \$500, \$1,000—because I have had cases that have been brought to me that a lawyer has dealt with and they did not represent the individuals properly. They have just simply taken the retainer and didn't do anything with the case.

Mrs. Van Bommel: But do paralegals then—is that something that doesn't happen in the profession of—

Mr. Francis: I have heard that as well. Personally, because I'm a person of integrity, I would never do that, because I wouldn't want that to happen to me. If someone hires me to do a job, retains my services or contracts me to do a job, I ensure that it is properly done, because at the end of the day I have to go to sleep. I have a conscience.

Mrs. Van Bommel: So who do you think should have the disciplinary role in terms of paralegals?

Mr. Francis: I think that it should be a department within the ministry of consumer services. I'm very leery of non-profit organizations, especially ones that are registered under section 140 of the Income Tax Act.

The Chair: Thank you very much, Mr. Francis.

Mr. Francis: I thank you for accommodating me.

The Chair: We'll be taking a five-minute recess as the next presenter is not here, so we'll convene at 11.

Mr. Francis: May I advertise myself one more time?

The Chair: We're recessing for five minutes. Thank you very much.

The committee recessed from 1058 to 1105.

ROBERT STEWART

The Chair: We're going to skip one presenter because she's not here yet. The next presentation is from Robert Stewart. You have 20 minutes. You may begin.

Mr. Robert Stewart: First of all, I want to thank you for permitting me to make a deputation today. It's important, I think, with respect to three points I'd like to make just in regard to my own position. First, the report that you have is not up to what I would call my standards. Unfortunately I just got out of the hospital. I'm a little slow, to be candid, and my responses may not seem as lucid as they usually are. I know that Mr. Balkissoon has seen me in action before, so he may comment at some point.

It's important from my point of view that you understand that I am probably an odd duck when it comes to making submissions in regard to this bill, in particular the paralegal issue. The reason for that is that I am a graduate of a law school. I practised law for almost 17 years and I now carry on business as a paralegal. In 1989-90, I was permitted to resign from the law society under section 35, which is commonly called the mental health section. In a nutshell, I burnt out.

I am one of the few people in Ontario who has carried on practice both as a lawyer and now as a paralegal. I do so with my experience as a lawyer. As a lawyer I appeared in almost every court in the province, including the court of appeal. Unfortunately, I did not make it to the Supreme Court of Canada other than to watch. My experience is based on my practice as a lawyer and acting as a lawyer. My practice as a paralegal is carried on much the same as I would carry on my practice as a lawyer. Irrespective of the way other paralegals carry on in their business and their practice, I have adhered to and I try to adhere to the rules of conduct as set by the law society and the general rules which lawyers follow in the course of conducting their practice. That has made me in some respects sort of a paralegal to the paralegals or an agent for the agents from time to time, because court agents and paralegals, whatever you wish to call them, come to me with their problems and I help resolve those problems.

Since I have been in the paralegal business, I have acted in Small Claims Court and provincial court, I have acted for adjudicative bodies, I've appeared before one other subcommittee of this Legislature and I've appeared before the city of Toronto and its predecessor, the Metro Toronto council and its subcommittees on a regular basis. I am an advocate for a number of organizations and businesses. In that regard, I have a little different view than most paralegals may have with respect to the issues

of licensing and regulation. These are the paralegal businesses.

First of all, I want to make it clear that I believe that paralegals should be licensed in Ontario. I think it's a necessity, because paralegals in Ontario are a quickly growing industry. It is a business that interacts with the justice system and with the public on a daily basis. In that regard, I do not differ from most of the submissions and deputations you've heard to date. I believe that regulation of paralegals in Ontario is a necessity for one very important purpose, and that is to bring up the standards to ensure that they are properly educated and that when they go to court, make representations or fill out documents, they know what they're doing. In that regard, I think I agree with all the others.

1110

I believe that the regulation of paralegals and the provision of legal services is one which requires a strong hand. It's one which requires that all those who are involved in the legal services industry should be a part of, and they should interact on a regular basis and upgrade themselves from time to time as laws change, processes change, courts change. Where I differ is with respect to who should be regulating the paralegal industry. I have read the draft bill, I have read the sections in Bill 14 in regards to the law society, and although I may be swimming upstream on this, my view is that the law society is not the appropriate party at this time to regulate paralegals. I believe that for a number of reasons.

Keep in mind, I have had experience with the law society, and I don't carry this as a shield. I have had a run-up against the law society and I have been disciplined by the law society. In most of those cases, that discipline was appropriate, that discipline was called for and was as a result of my inability to do what I should have done as a lawyer. I have learned. But I also know the way the law society responds and the way they act and where their interests are.

Irrespective of what you may have heard from the treasurer—and I should indicate that I know Mr. MacKenzie. I've dealt with him in the past as a solicitor and I have the highest respect for him. The fact of the matter is that the law society at this time is not the appropriate party.

Paralegals should be a self-regulated industry—not without input from the law society, not without a firm hand from the law society, but they should not be regulated by the law society. The paralegal industry should be permitted to grow, as other industries have in Ontario. They should be permitted to work in the environment that they wish to work in, as other industries have, and they should be permitted to set up their own regulated body to ensure that paralegal services provided, whether they be deemed to be legal services or otherwise, are properly put out so that the customer or the client is properly protected.

I don't say this with any great relish, but I think we've all seen in the papers from time to time these polls about the most respected professions in Ontario. Without fail,

one paper or another in Toronto generally comes up with a list of who the most disrespected are. They list lawyers, politicians and used car dealers all together and say, "Boy, these are terrible guys." I don't believe it, I don't accept it, but that's part of the public perception. What's interesting is that used car dealers are self-regulated. They are self-regulated with the assistance of the province.

In that regard, irrespective of the fact is that the AG has gone to the law society and said, "What do we need? How do we regulate?" it is my respectful view that the law society is not the appropriate party for a number of reasons. First of all, having read the material and having read Mr. MacKenzie's submission and I think Mr. Heins's submission, the law society effectively wants to create, as I see it, a subculture or sublicensee within the law society subject to the same rules and conditions that lawyers are. This would include rules of conduct, education, the requirement of keeping trust accounts, the requirement of keeping proper books and records. It would include all of the responsibilities that lawyers have. In that regard, I think paralegals should live up to that.

The problem is that paralegals will not be permitted the benefits of lawyers—and in some respect they shouldn't be, because they're not lawyers. Paralegals provide a service that permits access to justice. In fact, that was the phraseology used in the act. In my respectful view, that is one of the key issues the law society does approach. They don't approach it properly.

You'll find in my report that I have attacked—and I don't like to use that phrase—the submissions of the law society and Mr. MacKenzie. I did so because having read it once, twice and finally a third time, I realized what in fact the law society intends to do.

First of all, even the simplest approach in changing the name from paralegal to some other name—they haven't decided what it is—is to remove the identity about the subject matter. The next thing is to deconstruct what they do, and that's exactly what has happened. The law society has taken the position that paralegals who provide services across the board should be limited to certain areas or practices, if you want to call it that. Then they criminalize certain sections and work that is to be done by looking at the sections. If you look at the definition sections of what legal services are, there is nothing left to the imagination at all—not a thing. Even the ability to advise somebody—and it doesn't say for a fee, simply to advise.

If, for example, a client came to me and said, "Mr. Stewart, I got involved in a car accident and it looks like I'm going to be off work for two years. What do I do?" under the new legislation, the only advice I can give him is, "I can't advise you." I can't even advise him to go to see a lawyer. As silly as it sounds, I can't, because the definition sections are so broad, so encompassing—and I don't mean to create a fearmongering issue.

If that bill were in place today and I wanted to represent an association, I couldn't come here. I would

not be permitted under the act to come here and make representations, because in the course of doing that it would be clear that I would have had to look at the legislation, advise my clients as to the legal nature of the legislation and then advise my clients as to what they should say or what I could say on their behalf and make representations.

Will the law society exempt me in that circumstance? I don't know the answer to that. In fact, I don't think the law society knows the answer to that. But the law society is well prepared to criminalize any person giving any advice of any kind, any sort, with respect to any legal issues or matters. That is so broad and so encompassing, it is frightening. It is frightening to those of us who carry on business as paralegals.

What's also interesting is that lawyers are not required to be certified in specific sections. Pursuant to the Law Society Act and pursuant to the rules under which lawyers work, lawyers do have the ability to become certified as specialists. My understanding is that in Ontario, of the something like 35,000 lawyers who are currently licensed, 1% or 2% are certified as specialists. I have looked at Mr. MacKenzie's report and I note that he uses an anecdote in his report, and I've mentioned it in my report. He talks about the case of a litigant—I can't remember if it was a male or female—who went to a paralegal. The paralegal was going to settle for, I don't know, \$8,000. Luckily, and thank God, according to Mr. MacKenzie, the person went to a lawyer and the lawyer got \$47,000.

Mr. Runciman: Forty-eight thousand.

Mr. Robert Stewart: Forty-eight thousand. Thank you.

Those cases actually do happen. Let me tell you, though, in my second year of practice, I took over a file from a lawyer who was going to settle a case where a man had fallen off a scaffolding—the scaffolding actually fell about 14 storeys; he was a window-washer—for \$8,000. I got him \$88,000. It's not something that is inherent with paralegals; it is something that is inherent in the practice of or the carrying on of legal services. Mistakes are made.

The law society says, "Well, we have a law society, we have a discipline committee, we have insurance and we have a way of dealing with issues where lawyers are negligent or there are complaints about lawyers. I agree. They do. Paralegals should have the same opportunity and they should be judged by their peers, as are lawyers. Lawyers acting on behalf of the law society who are involved in a peer resolution where paralegals are concerned, I respectfully submit, would be extremely hard on paralegals, because they have to be hard on themselves. The standards that they know are those standards they have lived with for anywhere from five years to 40 years, and those are the standards of lawyers. Any lawyer who has ever been sued will tell you that the microscope of a judicial inquiry is far greater than anything they would ever expect to undergo. When the law society looks at a file, they look at absolutely everything—and

they should. But they look at it through the eyes of a lawyer in practice and the standards in the community. Paralegals know what the standards in the community are. Yes, they should be raised, but by the same token they should be regulated and they should be able to judge their own peers.

1120

It is my respectful submission, though, that a regulatory body for paralegals should include lawyers or representatives of the law society, as it should include members of the government. That is for the purpose of public protection.

Having criminalized much of the action, though, that paralegals undertake in Ontario, the law society then goes on to reconstruct by way of the certification procedure—I give you my example because it's anecdotal and it's the one I know the best. Since I have started doing work as a paralegal, I have appeared in the—and I'll list them for you; I'm not trying to impress anybody, it's just what I do—Small Claims Court, provincial offences court. I've appeared before the Licence Appeal Tribunal, the LAT; the landlord and tenant tribunal; I have appeared before the workers' compensation tribunal. I've appeared before FSCO; I have appeared before the Criminal Injuries Compensation Board; I have appeared before the provincial court criminal division on matters where I'm permitted. Thankfully and luckily, I have prepared for each of those and I've been successful. If the law society has their way in their regime, I will be required to pick up a licence for every single area of law that I wish to undertake.

On the financial side, paralegals don't get paid what lawyers get paid, and that leads me to the issue that is most important in my mind. I will tell you, and I ask you to accept at face value, that as a paralegal I probably do about one third pro bono work and about 10% never-get-paid work. That's work that I do for clients who cannot afford to pay me, who promise to pay me and I don't get paid. That unfortunately was a problem I had in practice, which led to the difficulties I had, but as a paralegal, the dollars are a lot less. But it's interesting, because my clientele, the people who come to me, are people who range from the disenfranchised, those who have no money and no homes, to those in the lower middle class who cannot afford the services of a lawyer. They are people who say, "I have an issue." They are people who look at figures and look at numbers that can break the bank for them.

I'll give you an example in a general way. Small Claims Court has a monetary jurisdiction of \$10,000. That's not a lot of money. When you're a lawyer, suing or defending, the first thing you tell your client is, "Hey, \$10,000, you can't litigate this. You can't afford to litigate this. It just isn't in the ballpark." That's one reason why the rules with respect to Superior Court changed to a minimum of \$25,000, because that's about where it starts to work.

The amount of work that goes into properly acting for a client, either as plaintiff or defendant in Small Claims Court, the amount of work that is required to do an action

for \$10,000, is almost the same as Superior Court. You have to prepare your client, prepare your documents, prepare a draft, prepare your claim or your defence, get the filing done. You have to pay the fees, although there is a minor difference in fees. You have to go to a pre-trial. You don't get discoveries, mind you, but you do go to trial; in fact, if you do your work properly, you don't go to trial. You try to keep your client out of the courtroom.

But in the end, the average work done on a properly litigated \$10,000 claim is somewhere in the neighbourhood of 50 to 60 hours. Who is going to set the fees for law clerks or paralegals? Will the law society decide that?

The Chair: Mr. Stewart, you have about a minute left, so—

Mr. Robert Stewart: Finish it off.

I simply suggest to you that the cost-effectiveness of paralegals is something that has to be looked at, and in that regard, I would ask you to reconsider. I submit that paralegals ought to be regulated, if not directly by the law society, then the same as the IDA is, for example, with the Ontario Securities Commission.

Thank you for the opportunity to make these submissions. I apologize if I've run on a bit too long.

The Chair: No, not at all. We'll have one quick question from each side. Go ahead.

Mr. Runciman: I think your case was very cogently put, although you were somewhat hesitant initially about your ability to do that. I think it has been very helpful. We've heard a lot of repetitive comments with respect to this initiative over the last little while. You brought some new points for all of us to consider. I'm not trying to go after a previous witness—no vendetta here—but I know that in part of your submission you talk about significant contact with other people in the paralegal profession. It was suggested by the Seneca College deputants here earlier that there are a great many paralegals who are very supportive of this legislation and see it being very helpful to them, but as a result, they're not appearing before us. We're not hearing from them. I just wonder, since you have had extensive contact, are you hearing the same, what the deputants from Seneca were suggesting to this committee is the case?

Mr. Robert Stewart: My discussions and my experience have been that—there are two parts to the answer, if I can do it that way. First of all, the representatives who met with the law society and met with the AG represented three paralegal associations with a total membership of about 250, 300 paralegals. There are well over 5,000 paralegals in Ontario. The paralegals I have met with—and I've met with about 600 paralegals over the last six months. These are generally very easy conversations, light conversations. They have all been: "Well, we thought the paralegal associations were representing us and knew what we wanted." And now they've come to the conclusion that they don't know.

Up until my surgery the first week of August, I was on the phone on a regular basis trying to get people

involved. My understanding, as of yesterday, was that at least 10 or 15 had made inquiries to come and give a presentation. I will tell you that the ones I have spoken to all agree with three things: (1) There should be regulation; (2) it either should be self-regulated or in conjunction with the law society; and (3) most importantly, they did not want the law society at this time to be the regulator of paralegals until their working relationship has grown to one where they understand each other.

The Chair: Thank you very much. Any questions?

Mr. Bas Balkissoon (Scarborough-Rouge River):

Mr. Stewart, thanks for coming and thanks for your input. I notice you didn't stick to your script. In item number 8, you mention an independent commission and giving them five to 10 years. You also made comment as to who should be the representatives on the commission. I just wonder if you could comment on that commission as to who would appoint these representatives and why it would take five to 10 years to actually get the paralegals to self-regulate themselves. What is the major problem?

Mr. Robert Stewart: The first part is the growth of the paralegal industry in Ontario. I don't disagree that there are people who have just simply hung out their shingle and said, "Hey, I'm a paralegal." I've seen them in court, and it's embarrassing and it's frustrating, not only to myself but to the judges. I do speak with some of the judges in Small Claims Court and provincial court.

My view is this: The regulation of paralegals is something that should grow over a period of time. There should be very strong regulations in force that bring all the paralegals into the regulatory scheme, and over a period of five and maybe even 10 years that scheme should then either create a completely self-regulatory body or a regulatory body much the same, as I indicated earlier, as the IDA and the OSC. For those who aren't aware—I'm sure everybody is, though—the OSC effectively is the cover operation for the IDA, and they are self-regulated. I know there is conflict between the IDA and the OSC—I've read the reports in Hansard in that regard—but the fact is, the IDA does do a very competent job in regulating their own. The law society may eventually, and maybe probably should, end up being the covering operation for the regulation of paralegals, because as paralegals become members and as they join in, as they become regulated, there should be a coalescence, because legal services are being provided. But I don't believe that the law society at this point can actually properly regulate in all three functions—being lawmaker, enforcement, discipline—all the things they would do. It's a period of growth.

I think that as paralegals come to understand what the law society is all about, what they want and what they understand legal services to be, and as the courts and the various adjudicative bodies understand, that will grow, hopefully, into an operation in five to 10 years that coalesces with the law society. Eventually, the law society should probably regulate paralegals.

Mr. Balkissoon: Thanks for coming.

The Chair: Thank you very much, Mr. Stewart.

Mr. Robert Stewart: Thank you, Mr. Chair.

The Chair: We'll be breaking for lunch, and we'll convene back here at 1 o'clock.

The committee recessed from 1130 to 1306.

The Chair: Good afternoon. Welcome back to the standing committee on justice policy. We're resuming our hearings this afternoon.

UNITED STEELWORKERS OF AMERICA

The Chair: Our first presenters are from the United Steelworkers of America. I believe we have Kevon Stewart and Heather Ann McConnell. Is that correct?

Mr. Kevon Stewart: Correct.

The Chair: You may begin your presentation. You have 30 minutes.

Ms. Heather Ann McConnell: Good afternoon. My name is Heather Ann McConnell, and I appear before you on behalf of the United Steelworkers, District 6. Beside me is Kevon Stewart from the District 6 office.

On behalf of the Steelworkers, let me first start out by thanking you for the opportunity to speak with you this afternoon about paralegal regulation and Bill 14. The union commends you on your effort to regulate fee-for-service paralegals and thanks you again for the opportunity to raise the union's concerns regarding the possible effects of Bill 14 on non-fee-for-service trade union representatives.

First of all, let me provide you with some background information on our union and its structure. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union—the Steelworkers, or USW for short—is an international trade union with approximately 200,000 members in Canada. This includes approximately 80,000 members in the province of Ontario. As the bargaining agent for these members, the USW is a party to approximately 900 collective agreements across Ontario. This means that our union, its 51 staff representatives and its 1,000 elected representatives are responsible for the negotiation and enforcement of hundreds of collective agreements each year.

The USW has members in virtually every sector of Ontario's economy. Over the years, our membership has expanded from mining and steel production to include members who also produce electronics, auto parts, tires, rubber, plastics, potato chips and baked goods. Our members also work in banks, credit unions, legal clinics, nursing homes, hotels, restaurants, cafeterias, warehouses, call centres, security companies, offices, universities and trucking companies.

Our union advocates for these members and must therefore be able to represent them in a variety of legal forums. The USW is committed to ensuring that its members enjoy the best possible terms and conditions of employment. We achieve this goal by negotiating and enforcing strong collective agreements. The majority of our collective bargaining and enforcement is prepared and presented by union staff and elected officials, not by

legal counsel. Our union, through its staff and elected representatives, also represents its members in a variety of other legal forums, including statutory tribunals such as the Workplace Safety and Insurance Board.

The union has a large and diverse membership. We have a proud history and tradition of representing our members' rights aggressively in a variety of legal venues. Our union is not unique. Trade union representatives across Ontario make important contributions to the advancements of workers' rights and interests in all sorts of legal venues. By making workers' rights enforceable through staff and elected officials, justice becomes accessible to union members. The prohibitive cost and delay associated with the enforcement of legal rights through counsel and the court system is eliminated. The enforcement of workers' rights is an essential feature of a free and democratic society, which must be facilitated and encouraged, not hindered by unnecessary constraints.

The problem is that Bill 14 is broadly drafted and will thus cover union representation. As Bill 14 is currently written, any person providing legal services will be regulated by the law society. This is achieved through amendments to the Law Society Act. The definition of "legal services" is as follows:

"For the purposes of this act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person."

If a person does any of the following, they are said to be providing legal services: "gives a person advice with respect to the legal interests, rights or responsibilities..."; "selects, drafts, completes or revises ... a document for use in a proceeding before an adjudicative body..."; "represents a person in a proceeding before an adjudicative body"; or "negotiates the legal interests, rights or responsibilities of a person."

The definition of "adjudicative body" in this particular case would also include arbitrators. It would therefore appear that the bill applies to trade union representatives giving advice on or appearing before the Ontario Labour Relations Board, the Workplace Safety and Insurance Board, the Ontario Human Rights Commission and the Workplace Safety and Insurance Appeals Tribunal. It would also apply to union representation appearing before labour arbitrators, as well as negotiations during collective bargaining.

It is clear that the legislative intent of this bill is to improve access to justice and to insert transparency and accountability into the system. In addition, and perhaps more importantly, the objective of the bill is to establish minimum qualifications and minimum standards for the protection of consumers of these services. The Steelworkers recognize the statutory objectives of the bill, including the need to regulate paralegals. However, it is neither necessary nor appropriate for the new law to regulate persons and conduct which is already well-regulated.

The committee and the law society both appear to recognize this. As the bill is currently written, the law

society has discretion to exclude trade union representatives by enacting exclusionary bylaws. In a letter dated March 28, 2006, addressed to the president of the Ontario Federation of Labour, the law society said the following:

"I can assure you that the law society has no intention to regulate the activities that trade union representatives engage in.... However, it is also important that unscrupulous individuals not attempt to characterize their services as exempt as a result of a statutory provision."

The USW is pleased that the law society recognizes that duplication of regulation is not necessary. However, the USW submits that the bill must be amended to make this exclusion explicit. The law should be clear that trade unions, their officials, their representatives, officers or agents, when they are acting in these capacities and on behalf of their union and/or its members, are not covered by Bill 14. This exemption ought to appear in the legislation and not be left to the discretion of the law society.

It is appropriate for the Legislature to make this exemption explicit, given that it is the government that has seen fit to enact detailed and comprehensive labour legislation. Union representatives should continue to be regulated through labour law, and not under a different statute, to ensure that the regulation of union representatives is coherent and consistent. Not only is this more efficient because it eliminates duplication of regulation, but it avoids confusion to members when there is a complaint regarding their representation. Moreover, an explicit exclusion is respectful of the long-standing jurisdiction of the Ontario Labour Relations Board.

The USW supports the objectives behind this bill. However, in the unionized context, these objectives are already protected and achieved. We submit that the labour relations system facilitates access to justice. It is also a system that contains provisions for transparency, accountability and consumer protection.

Allow me to speak now about how trade union representatives and elected officials are regulated in the labour relations context. The Ontario Labour Relations Act contains provisions which protect union members. The act contains a detailed duty of fair representation, which protects union members from any representation by their union that falls below the standards set out by the Ontario Labour Relations Board. Under section 74 of the act, a trade union has a duty not to act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of its members. The duty applies to the union as a whole and therefore covers both union employees and democratically elected officials.

The board has extensive expertise in labour relations and related fields as well as decades of jurisprudence. This ensures that the union's obligations to its members and specifically its duties under section 74 are reviewed and applied in a way that is sensitive to the realities of the labour relations process. The union strenuously objects to the duplication of the board's jurisdiction to deal with these matters.

The regulation of union officials and staff does not stop here. Under the act, unions are also subject to the de-

certification of their bargaining rights through a democratic process which can be initiated by members who are dissatisfied with the representation provided by their union. Union members are also protected through internal structures and the democratic nature of unions themselves. Unions and their members are governed by constitutions, which in the case of the steelworkers includes an internal process of self-regulation. In addition, the union membership in Ontario elects its leadership under a one member, one vote model, which serves to further reinforce and protect the importance of members' rights. The union staff representatives, who are experienced union advocates, are extensively trained and advised by the union and its professional staff. They are also subject to discipline and discharge, as are any employees of the union.

By way of conclusion, in the labour relations scheme there exists a variety of internal and external mechanisms to regulate union representation. As stated previously, the Ontario government has implemented a labour relations system which both drives and governs this scheme. This system has developed and evolved over a number of years and is monitored by a well respected board of labour relations experts. It is neither necessary nor appropriate to duplicate or eliminate the board's jurisdiction to deal with these matters. As stated previously, implementing this legislation as it stands would, in the labour relations context, contradict the stated purpose of ensuring accountability, facilitating access to justice and protecting the public. In fact, it would lead to disruption, duplication and confusion. For these reasons, United Steelworkers request the addition of an exclusionary amendment to this bill.

The USW thanks you again for the opportunity to address the committee today. We hope that you will seriously consider the impact that this legislation could have on our ability as a union to represent our members and to consider the impact that this bill could have on labour relations as a whole. If you have further questions, Kevon Stewart and I will do our best to address them. With respect, these are the submissions that I have prepared today.

The Chair: Thank you very much. We'll begin with about six minutes with Mr. Kormos.

Mr. Kormos: Thank you very much. Yours has been an excellent contribution to this discussion, with points well made. You should know that OPSEU addressed similar issues yesterday. Last week the United Food and Commercial Workers addressed similar issues with the same concerns.

I share your concern about how this legislation, Bill 14, delegates the exclusion by virtue of the bylaw power of the law society. Down where I come from in Niagara we call that ass-backwards. This bill assumes that everybody is a paralegal. As we speak, and as I've had occasion to mention before, right now there are at least 20 people in 20 different coffee shops across Ontario giving legal advice, marital advice, highway traffic advice and property law advice. It's happening and

they're in violation of Bill 14. We're talking about paralegals. Everybody here wants to see a regulatory regime for paralegals in this province; so do paralegals. Mind you, we haven't had one come to the committee yet to support Bill 14, other than Mr. Dray, who is a benchner with the law society. Go figure.

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But I really think the whole bill is losing steam. The parliamentary assistant is Mr. Zimmer. This is the second day in a row he hasn't bothered to show up. He's just, "Adios, so long, been good to know you." You don't even have the parliamentary assistant to the Attorney General showing any interest in the bill, you haven't got any support from the paralegal community, and it seems to me that if you're going to regulate a profession, there has to be some buy-in by the profession, doesn't there? Is that a fair observation?

Ms. McConnell: Probably, yes.

Mr. Kormos: So I don't know. I've never seen anything like this in 18 years now. Mr. Runciman has been here twice as long as that. Really, I've never seen anything like this. This is sputtering, it's grinding to a halt, to the point where the parliamentary assistant is so bored and disinterested in the whole matter that he vamooses, he's long gone, out of town, hit the road. Remarkable. Thank you very much for your contribution.

The Chair: Thank you, Mr. Kormos. The government side, any questions?

Mrs. Van Bommel: I just want to say thank you very much. Certainly the same request has come from other unions and we appreciate your taking the time to present it to the committee.

The Chair: Mr. McMeekin?

Mr. McMeekin: One of the most useful courses I took at university was the speed reading course and I've had a chance to—my apologies. I was actually dealing with a labour issue with another one of your union sisters.

Mr. Kormos: It couldn't have been a grievance. You don't allow your staff to unionize.

Mr. McMeekin: You shouldn't go there, Mr. Kormos, because I know some things about the NDP staff.

I just want to thank you. There's a long and very distinguished history of key labour personnel, union personnel, being involved in what is explicitly a labour-related specialty. I don't think we ever want to run the risk of losing that. There's been an emerging consensus around that which I'm certainly hearing here and I just want you to know that. So we're going to have to look at that. We do understand that the law society has already offered their opinion that certain things will be made exempt, including activities of this nature. So that's good to know.

Finally, just for the record, the parliamentary assistant, Mr. Zimmer—you need to understand that there's often more than one committee that you need to relate to. He's not here because he chooses not to be here but because he has some other responsibilities, which is why—

Mr. Kormos: You be careful, Mr. McMeekin. Where is he? How do you spell "junktet"?

Mr. McMeekin: It's not a junket. That's why there are four members of the government side here today, to make sure we hear your views, and we really appreciate your taking the time to do it. Thanks very much.

The Chair: Thank you, Mr. McMeekin. Mr. Runciman?

Mr. Runciman: Thank you for being here. I take a different perspective on the parliamentary assistant's absence. I think it's not so much that they've given up on the legislation but that they have made a decision that they're going ahead regardless of the input and contributions we hear over the period of the hearings of this committee. I think that's the regrettable truth of the matter.

I think you have every right to be concerned. Although you haven't been quite as specific in terms of looking for a change that would eliminate the individuals you're representing from the scope of this legislation, there are an awful lot of other folks who are also captured by this who have similar concerns, and we're going to be hearing from them over the next couple of days. I know, looking at some of the Hansard minutes, issues were raised by the Canadian Institute of Mortgage Brokers and Lenders and the Intellectual Property Institute of Canada. We have the real estate association coming before us, banking organizations coming before us, and one of our witnesses this morning, Mr. Stewart, provided us with refreshers with respect to some of the testimony that we heard earlier from the law society. I gather, specifically, Mr. MacKenzie, who I think is or was the treasurer of the law society, which is dealing specifically with the issue you've raised here. This is specifically dispute resolution practitioners. But the question that was raised by Mr. Kormos was: How are we going to be sure these people are not going to get caught up in this broad definition of legal services? The treasurer's response was, "Well, why shouldn't they be?" It's their challenge to say why they shouldn't be caught up in this net, if you will. That's the perspective they have. I think it's a concern that we're going to hear more of in the next couple of days. It's certainly one—you've heard from the official opposition and the NDP that we're going to be doing what we can during the course of these proceedings to ensure that those kinds of concerns are addressed, certainly hopefully through amendment to the bill, but if that doesn't happen, we'll certainly be carrying the case forward during third reading debate in the Legislature.

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS

The Chair: The next presentation is from the Ombudsman for Banking Services and Investments. Good afternoon.

Mr. David Agnew: Good afternoon. Let me introduce myself. I'm David Agnew. I'm the Ombudsman for Banking Services and Investments. With me is my col-

league Doug Melville, who is the senior deputy Ombudsman. Doug oversees our banking services investigations at the office.

I should start, obviously, by thanking you for this opportunity to appear before you and to contribute to your deliberations on Bill 14. I think it's probably necessary to first introduce our organization to you. The Ombudsman for Banking Services and Investments, OBSI, is an independent national dispute resolution service for customers of more than 600 financial institutions across Canada. Our mandate is to impartially investigate unresolved complaints against one of our member firms. We are a free service for consumers. Our focus is on getting people's money back if there has been an event of maladministration, of incorrect advice, misleading information in their dealings with one of our member firms. If we uphold a complaint on behalf of a banking or an investment client, we issue a recommendation that the firm pay the client an appropriate amount of compensation for their direct financial loss. Just to be very clear about this, we are not a court, we are not a regulator, we don't have the authority to impose regulatory sanctions or fines. We are a classic kind of Ombudsman model.

We were established 10 years ago as the Canadian Banking Ombudsman, or CBO, and our first mandate was, in fact, to provide services to small business; it very quickly expanded to all retail customers of the major chartered banks across Canada. It was in 2002, or about four years ago, that our mandate greatly expanded to cover the investment industry. That's when all the members of the IDA, the Investment Dealers Association, Mutual Fund Dealers Association, the Investment Funds Institute of Canada, or IFIC, came into membership. Today our 600 members are all of those investment firms plus the major chartered banks, the foreign and domestic; some credit unions across Canada; the low-interest industry regulated at the federal level and a few others.

So we're an alternative to the legal system or the arbitration system and, as such, our services are informal. We are confidential and of course, as I say, we are free to the client. We are funded by a levy on our member firms. It's distributed depending on the industry, either on an asset or assets-under-administration basis across the board. Our system in Canada is built on the principle that the prime responsibility to resolve a complaint starts with the firm. It's when it's unresolved with the firm that it can be escalated to us. Every customer of those financial institutions has a right to escalate the complaint to us.

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We will review the file and, if necessary, undertake a full investigation, and then we can do one of essentially three things: We can uphold the firm's position in the dispute; we can make a recommendation for compensation; or, in some cases, we will facilitate a settlement between the two parties. Whatever our finding—and this really goes to the core of our Ombudsman model—it's a position that neither client nor firm is bound to accept, although I am pleased to say that we have a very high acceptance rate by both firms and clients.

Of course, under our rules, it's a name-and-shame power. So if a firm refuses one of our recommendations, we then have the authority under our rules to publicize that fact. Our clients retain their legal rights and, if they're dissatisfied with the outcome of our investigation, our recommendation, they can then pursue other avenues; of course if they choose legal avenues, subject to limitations periods. It's that very subject that brings me here today. You will know that the reduction in the limitations period that took place a little bit over a year ago was met with some controversy, I think it's fair to say, once it was discovered to have happened, in many quarters, in particular the investor advocate community.

We know very well, because we are a national service, that Ontario is not alone in reducing its limitations period, but of course the result, particularly if you look at it from a national point of view, is a real patchwork across the country—going from six-year limitations in BC to three years in Quebec; it's two here in Ontario, Alberta, Saskatchewan, Newfoundland and Labrador. There are different rules in each province. While those rules, in a sense, whatever the limitation period is, don't affect our ability to take on a case, if the limitations period has expired, it does remove one of the disciplines in the Ombudsman system, which is, as a voluntary system for the client, they then can move on to a legal solution if they're not satisfied with our response.

We believe that over the years that we have been in operation, because of our availability to dissatisfied consumers, we have operated as that alternative to the legal system and thus—and I think this is consistent with several governments' perspectives on trying to move things more quickly through the legal system and to reduce the overall cost—we've saved the legal system—we save individuals and firms substantial individual and systemic legal costs. Of course, in the context of a dispute, I think the fact that we exist also reduces some of the pressure on a client to accept a settlement, knowing that, in fact, there is a third party they can go to for an impartial and neutral look at their case.

So our concern with the reduced limitations period has been that it may cause those clients who still have complaints that have not been resolved to take, in our view, premature and perhaps ultimately unnecessary legal proceedings because they fear they're going to lose their opportunity to commence civil action under the pressure of a ticking limitations clock. Obviously, that's going to harm most those who can least afford the cost, and it's a very high cost, as you well know, of a private legal proceeding. It will also then have the perverse effect of clogging the courts with cases that should not have been there in the first place.

So as a neutral dispute resolution service, it's not our job to advocate for either side in a dispute, but we do see ourselves as advocates for an effective dispute resolution system, and we do know that with the complexity of today's financial services system and its products, it can take considerable time to resolve a dispute.

We also understand, on the other hand, as an investigative body, that over time memories fade, documents

disappear, circumstances change, sometimes employees move on, and so the sooner we can open a file after the events in question, the better. Of course, it also is the case that, particularly for laypersons, they're not always able to understand the immediate impact of a matter of a maladministration or a bad bit of advice, particularly if the consequences of that are not felt immediately.

Therefore, and in conclusion, we were pleased to see the provisions in the bill before you to amend section 11 of the Limitations Act to provide absolute clarity that the limitations clock will stop when a dispute comes to us and for as long as we are engaged in an attempt to resolve the issue. While our view was very strong that the existing and unamended section 11 had already contemplated our service and therefore should be sufficient comfort for affected clients, we welcome this further clarification. We believe this amendment, which we acknowledge with appreciation, was done in consultation with us, has put to rest any doubts. This is an important confirmation of our value to the public.

Thank you for your time. Thank you for your attention. I would be happy to answer any questions.

The Chair: Thank you very much. We'll begin with the government side, about seven minutes each.

Mr. McMeekin: I really appreciate your coming out and sharing, because there were a number of questions that were coming up about various forms of liability that are carried by people, be they in a union context, a banking context or social work context etc. I had asked the researcher to do some background work and she suggested we might even get the answers just from you when you appear this afternoon in terms of the kind of liability insurance—banks are into so many things now, with all kinds of legal implications. What kind of liability insurance do banks carry? Errors and omissions, that kind of thing?

Mr. Agnew: It's a little bit out of my expertise to answer on behalf of the banks.

Mr. McMeekin: You're about as close as we're going to get, I think.

Mr. Agnew: I can certainly give you some phone numbers if you'd like to call directly. Let's take it out of the specific context of banks and speak of financial institutions. Certainly one of the realities of our world is that when we do make a recommendation for compensation, we know the realities. There is often an insurance company that is going to have to foot the bill or part of the bill in payment of that recommendation. So it's fairly standard practice, certainly at the adviser level in financial services, to hold that kind of insurance.

Mr. McMeekin: You use words like "often" and "fairly standard practice." I was hoping to hear "is always there and is standard practice."

Mr. Agnew: As I say, just to be really clear about this, we are not part of the regulatory system, so it's not up to us to enforce rules. If there are rules that say—and there may very well be rules in certain professions—that you must carry certain kinds of insurance, that's absolutely important. What's important to us is that at the end of the

day when we make a recommendation for compensation, the client who has been affected is able to get the money they deserve.

The Chair: Any other questions? The opposition?

Mr. Runciman: No questions.

The Chair: Mr. Kormos.

Mr. Kormos: Your comments are very specifically with respect to section 1 of schedule D and its amendment to section 11 of the Limitations Act?

Mr. Agnew: Correct, sir.

Mr. Kormos: Is there anybody who is going to come forward with a contra-view?

Mr. Agnew: I would certainly not expect so. I think what you are likely to hear as a committee, perhaps even this afternoon, let me guess—and it's up to you to decide where the boundaries are—is that the Limitations Act changes have been hurtful to people because of the expiry of their rights to proceed to civil proceedings.

Mr. Kormos: I suspect that will come from the small investors.

Mr. Agnew: I suspect so. Of course, that's speaking of an investor group. That's kind of half of our work, but the other half is people who are affected by banking issues. Of course there are people who are affected by, broadly speaking in financial services, lots of other professions, so it's an issue that's broadly felt. I think one of the—I don't want to say "unique"—things that under our service we can do is stop the clock. That's a good thing, so I don't think you'll hear a lot of advocacy against it. I apologize for the narrowness of my advocacy.

Mr. Kormos: No, no, I appreciate it. You've given me an opportunity to show a positive response to at least one paragraph of this bill. Chair, unless something explosive is presented to us that contradicts what Mr. Agnew puts to us, I want to assure Mr. Agnew that, come clause-by-clause, I will at least be able to support section 1 of schedule D.

Mr. Agnew: One down and 192 pages to go.

The Chair: Thank you, gentlemen, for your presentation.

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CARP

The Chair: We'll be moving on to the 2 o'clock presentation from CARP. We have Mr. Bill Gleberzon, who's the director of government relations for CARP. Good afternoon.

Mr. Bill Gleberzon: Thank you very much for the opportunity to address the committee. For those who don't know us, CARP, Canada's Association for the Fifty-Plus, is the largest national association of mature Canadians in our country, representing over 250,000 members in Ontario and over 400,000 members across the country who are 50 and older, retired or still working. A non-profit organization, CARP does not receive operating funds from any level of government in order to maintain its independence and neutrality.

Our mandate is to promote and protect the rights and quality of life of older Canadians. Our mission is to provide practical recommendations for the issues we raise, rather than just carping about them.

I want to focus on the Limitations Act within Bill 14.

In CARP's view, the original reduction of the period from six to two years during which one can seek redress for loss of investment savings due to malfeasance by financial institutions is an injustice that smacks of financial elder abuse. Our concern is that this revision decreases access to justice for the millions of consumers who are small investors, particularly seniors. If they do not take action immediately, they will lose their right for civil action. Two years is not sufficient time for victims of such life-altering events to find their way through the current complaints-handling process and to initiate civil action at the end, let alone to recover from the trauma of discovering the event.

The proposed new clock for action starts ticking from the date on which the claim is discovered, or ought to have been discovered, by the person entitled to bring the claim. But who can objectively determine when the claim ought to have been discovered, and how can this be done? This is taking the principle of "buyer beware" to extraordinary heights, especially for unsophisticated investors for whom the economic disaster could last a lifetime.

According to a letter dated June 27, 2005, from the Attorney General of Ontario to Mr. Stan Buell, president of the Small Investor Protection Association, from whom you'll be hearing later, this change from six years to two years was "based on principles that recognize and fairly balance the competing interests of both plaintiffs and defendants.... entrepreneurship." This justification, in our view, is extremely one-sided. It obviously benefits financial institutions that may get away with their malfeasance and continue to prey on others. The issue at stake is justice for the victims rather than the so-called entrepreneurship by the alleged wrongdoers.

An agreement called a tolling agreement to let an independent third party mediate or arbitrate the dispute will suspend the limitation period for the duration of the arbitration or mediation process, but if that process fails to resolve the dispute, the limitation period countdown resumes where it left off prior to the arbitration.

The Ombudsman for Banking Services and Investments, from whom you've just heard, can stop the clock. However, investors with a dispute must first proceed through the industry's complaints-handling processes. Historically, these processes often take more than two years, with results that are not satisfactory. Moreover, based on past decisions, OBSI compensations are much lower than the amount of the claimed losses and decisions through civil litigation. And in the end, OBSI may not accept the claim; for example, in regard to segregated funds or non-bank-owned investment companies.

CARP is very concerned about the implication in the OBSI 2005 annual report that the financial industry may not be informing clients about their existence.

A regulator such as a securities commission or the Investment Dealers Association would not be considered to be a mediator or arbitrator for this purpose, so complaints to them will not suspend the limitation period. Once the limitation period expires, it cannot be revived.

Clients may not know the extent of their losses until late in the game; client statements rarely provide personal rates of return; book values obscure rather than illuminate portfolio performance; mutual fund terminology is often based on industry jargon, a foreign language to ordinary investors; suitable investments may temporarily mask the corrosive effects of unsuitable investments; and some mutual fund and hedge fund managers report semi-annually.

For many reasons, a specific fund may be unsuitable for an investor. Advisers may not want to admit to responsibility for the error and therefore encourage ignoring the unsuitability, hoping a fund will recover. Principal-guaranteed investments—many segregated funds and investment trusts—encourage speculation to recover from early losses. Lucrative trailer commissions also encourage advisers to not recommend selling a losing fund. Deferred sales charges: Sold funds result in an early redemption penalty that further discourages selling a losing fund, with advisers rarely counselling no-fee switches within the fund family or no-fee 10% annual withdrawals. These forces combine to encourage the investor to inappropriately hold on to unsuitable mutual funds. One year can easily be lost in this morass.

Behavioural finance scientists who have studied retail investor behaviour have concluded that investors go through a multi-phase internal process before they decide to react to bad news, and here it's spelled out for you graphically what that process is. Basically, they go through processes of embarrassment, the fear of regret, outright psychological depression, anchoring and cognitive dissonance, all factors that may cause investors to delay facing the reality that significant losses have been incurred and to take mitigating action. This cycle of denial can and does extend to years. The stress of a life-altering event such as the loss of a hard-earned retirement nest egg can be so debilitating that it can lead to depression and the inability to make a rational decision. In this mode, it's unlikely an investor will have the emotional strength to file a claim or take civil action in a timely manner.

Once an investor concludes he can and should complain, he must go through a long, extended and stressful process with the fund dealers and brokers. Some have referred to this complaint process as a quagmire, as the investor struggles with how and to whom to address a complaint. Before it's over, an investor must deal with his adviser, a branch supervisor, a vice-president, a compliance officer and the firm's ombudsman. During this complex process, documents are exchanged, there are many phone calls, and meetings are held. Sometimes key documents are missing or the adviser has left the company. The brokerage firm encourages delays with long response times and obtuse replies, begging for explanations that are not forthcoming. This phase alone

can take many months. Meanwhile, the Limitations Act clock keeps ticking away. The investor may be told his claim is not valid, even in cases where the courts later uphold the claim as valid.

Finally, investors who've encountered the firm's convoluted dispute resolution process can bring their case to the industry-funded Ombudsman for Banking Services and Investments. OBSI won't consider a case until all reasonable avenues have been pursued with the dealer/broker. The OBSI process alone can take more than one year. An OBSI investigation is initiated by a request from the investor. Although OBSI makes recommendations for settlement of the complaint, it does not have to be accepted by the firm or the investor. In fact, a number of investors have gone on to win claims after rejecting the OBSI recommendation and engaging a lawyer.

Although the Limitations Act enables the clock to stop ticking when a case is before OBSI, as I mentioned before, according to the 2005 OBSI annual report only a fraction of cases were resolved in favour of investors, and for a fraction of actual losses, leaving civil action the only resort for investors who feel they've been abused, if time still permits them to do so. Moreover, the OBSI 2005 annual report stated that 50% of the respondents to its survey on customer satisfaction indicated that their brokerage firm did not tell them that they had the right to complain to OBSI. So by the end of this vicious cycle of events, three or four years could easily pass, leaving the investor with no recourse. The ability to seek compensation through the courts is lost forever. This hardly seems an act in support of the public interest.

The act also has a tolling provision that bars the parties from mutually agreeing to an extended time by suspending a limitation period in the absence of third party mediation or arbitration. On top of this, the act could encourage some firms to deliberately stall on a settlement, hoping that the investor will run out of time.

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Small investors, especially seniors, depend on the returns from their life savings for their retirement income. They place their trust in the integrity of the investment industry, even believing it is well regulated. However, the regulators are not always vigorous enough in protecting small investors, who must frequently fend for themselves.

New high-risk products are entering the market all the time, which many small investors do not understand. Many of these products, such as business income trusts and principal protected notes, are not always suitable for seniors because of the possibility of significant loss.

Other issues that must be pointed out are:

The current dispute resolution mechanisms operate through either the industry or industry-funded agencies and are very time-consuming processes.

Arbitration is very expensive, ranging anywhere from \$3,000 to \$4,000 and upward to \$15,000 if the investor hires a lawyer, which is recommended because the industry uses lawyers in the arbitration, and currently this is not a popular choice.

The Limitations Act does not provide for financial support for small investors who engage in arbitration, so they will have to pay their own way, which will add to their stress, costs etc.

And, of course, the right to take civil action is eroded.

CARP's recommendations: We urge the committee to recommend the amendment of the Limitations Act to restore the previous six-year limitation period—this will ensure that small investors have the opportunity for a just resolution of their disputes and without having to immediately resort to costly and time-consuming civil litigation; provide support and protection for the small investor that is equitable with what the financial industry enjoys; and, finally, avoid the harm and havoc among small investors, including seniors, that the act will cause.

Thank you very much.

The Vice-Chair: Thank you very much. We have 15 minutes, so five minutes for every side. Mr. Runciman, you have the lead.

Mr. Runciman: Thank you for your presentation here today. It's very informative. When was the act, in terms of the years available, changed previously? It wasn't that long ago that it was increased to six years.

Mr. Gleberzon: No. It was 2004, about a year and a half ago.

Mr. Runciman: A year and a half ago it was increased to six?

Mr. Gleberzon: No, to two; from six to two. It was decreased. It used to be six years.

Mr. Runciman: Yes.

Mr. Gleberzon: And it was decreased to two years. At that time, we spoke out against that. The government passed the bill. For all the reasons that have been enunciated here, we think that it's totally unfair to small investors, particularly to seniors, for all the reasons I've talked about here.

Mr. Runciman: What do you think is driving this?

Mr. Gleberzon: I think the influence of the industry. Obviously it's much more favourably disposed toward the industry than toward the consumer.

Mr. Runciman: This is the investment industry?

Mr. Gleberzon: The investment industry. The ordinary investor is supposed to know when the alleged malfeasance may have started. Now, how do you know that? How do you know when that happens? You've lost some money in your account, you go to your financial adviser, you're told, "Well, it's a bad market, don't worry about it," and you're urged to keep on at it, and then you lose more.

Mr. Runciman: You only see the investment industry as having this kind of influence or having this kind of positive impact in terms of this kind of change? Are there others in the professional ranks or business who would benefit from this?

Mr. Gleberzon: Whoever among that group benefits, I can say the small investor does not.

Mr. Runciman: It seems to me that the retired person or persons you are representing would strike more fear into the government of the day in terms of your ability to

get people—your own constituents—concerned about the impact of this kind of legislation, rather than some investment community, whoever they might be. It's just curious to me that this is happening and you're apparently not being listened to very well.

Mr. Gleberzon: No, we're not, and in fact we did meet with people from the Attorney General's office and I have to say, quite frankly, it was one of the worst experiences we ever had. To be quite honest, we've met with bureaucrats, that's the job that we do, and at least they give us a semblance of listening to us. We felt that we were being totally ignored. We were told at the time that we met when they first were proposing the bill, the change, "Well, we'll have to wait until it's tested in the courts to see if it's going to have the kind of impact that you think it's going to have." Our position is, why wait? All the evidence—the kind of evidence I've demonstrated and other evidence—suggests that going from six to two years is just not a sensible course of action. It's certainly not beneficial.

Mr. Runciman: The previous witness talked about other jurisdictions in Canada. I guess it's a bit of a dog's breakfast. I'm not sure; do you have any data with respect to what's happening in other provinces?

Mr. Gleberzon: Well, a number of provinces have adopted the same course.

Mr. Runciman: The reduced limitation?

Mr. Gleberzon: They reduced it from six to two years, yes. But, having said that, so what? They shouldn't have done it and we shouldn't have done it, and that's the position we adopt, because—well, I don't have to rehash what I've already said.

Mr. Runciman: No. Thanks very much.

Mr. Gleberzon: Thank you.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, sir, for a very important submission. This schedule D hasn't received a whole lot of attention, and I was hoping you folks would be here; if not you, others with similar interests. It was James Daw, Toronto Star business columnist, who rang the alarm bells about this some time ago now in an edition of the Toronto Star.

Mr. Gleberzon: That's right.

Mr. Kormos: People will correct me if I'm wrong, and I'll be more than pleased to correct the record if I misstate any of the history, but as I recall, all members were under significant pressure from, amongst others, the law society to get this Limitations Act enacted. Again, I have no quarrel with that. We were assured that it had been reviewed thoroughly, and again, no quarrel with that.

It seems to me that there is a pragmatic interest for the law society to want some uniformity around limitation periods, because one of the big areas of claims against lawyers is in terms of missing limitation periods. There was a myriad of limitation periods contained in any number of statutes, and for lawyers, especially those who specialized in given areas, it was complex to keep on top of that. But it also seems to me that when as obvious a

problem as the one you raise is exposed, we should respond.

Mr. Gleberzon: Yes.

Mr. Kormos: Now, my fear, from when this bill was first presented and I first read it—again, provoked by the James Daw article in the Toronto Star—was concern that an amendment to the Limitations Act with respect to this specific area may well be out of order, because schedule D is very limited in terms of what parts of the Limitations Act it opens up; in other words, you could only amend what's here in the bill itself. So my concern is that—and I have no quarrel with the rules—it would be out of order but for having unanimous consent. Right, Mr. Runciman?

Mr. Runciman: That's right.

Mr. Kormos: You've been here a long time.

If there were unanimous consent, I could table that motion come clause-by-clause, and we could very speedily, effectively and meaningfully address what I will call nothing other than a sincere, honest oversight on the part of all of us who looked at the Limitations Act in its bill form and, our attention having been drawn to the problem, we should rectify it.

So I hope you will encourage your members to immediately sound the alarm bells and persuade all members of all caucuses to provide unanimous consent so that a mere but meaningful technicality in terms of the rules of procedure doesn't bar that amendment. I'd be pleased to make that amendment and I know Mr. Runciman would be pleased to make it. I think it would be a valuable thing. Heck, the law society has people here. They're well aware of your concerns. They're now in a position to comment on it too if they wish, aren't they?

1400

Mr. Gleberzon: Certainly.

Mr. Kormos: How does that sound to you?

Mr. Gleberzon: It sounds wonderful.

Mr. Kormos: Let's see what happens.

Mr. Gleberzon: Okay.

Mr. Kormos: Interesting, ain't it?

Mr. Gleberzon: It's very good and I'm taking copious notes. Thank you very much.

The Vice-Chair: The government?

Mr. McMeekin: Bill, thanks for your presentation. I know better than to make a commitment without having a lot more chat around the concern that you've raised, but I certainly appreciate your drawing it to our attention. I know a whole lot about CARP and the good work you do. By the way, my regards to all the folks back there. I miss you very much.

All of that aside, as I recall you're not the first group that has mentioned this. The architects/building trades folks came in and mentioned something. They talked about having an absolute deadline period but extending the opening period in which a claim could be seized. That seemed to me at the time to make some sense. They made a good case for that. You're making another similar argument, Bill, and I appreciate it. So we'll certainly take that under advisement and I'll undertake to make sure that the AG and his parliamentary assistant specifically,

along with other colleagues at the committee, do take some time to make sure we review this and try to get it right.

Mr. Gleberzon: Thank you. I appreciate that. I'll follow up. If you don't mind, I'll give you a buzz. Also, I'll be very happy to meet with the Attorney General or people from his office.

Mr. McMeekin: As always.

Mr. Gleberzon: As always.

Mr. McMeekin: Thanks, Bill.

The Vice-Chair: Thank you very much, sir. We appreciate your coming and presenting your case.

PARALEGAL TASK FORCE

The Vice-Chair: We're moving along quite well with our agenda. We haven't been able to contact the next deputant by teleconference, so we're moving on to our 3:30 appointment, which is the Paralegal Task Force, William Simpson, who has kindly agreed to help us keep our process moving along.

Mr. William Simpson: Just a little faster than we thought.

The Vice-Chair: I'll give you the time you need. We certainly want to express our appreciation to you for, first of all, being here early and then picking up the opportunity when it presented itself. I want to inform you that you have 30 minutes to do your presentation. If you do not use the entire 30 minutes, that gives members of the committee the opportunity to comment or ask questions of you. Before you start, I would appreciate it if you would identify yourself and all your colleagues for the record and then we will ask you to start your presentation.

Mr. William Simpson: Thank you, Madam Chair. I appreciate the opportunity of addressing the committee. My name is Bill Simpson. I'm a lawyer in Ottawa. I practise there but I am a benchner. During the course of the Paralegal Task Force I've been its chair and am appearing here in that respect.

On my right is Katherine Corrick. She's the law society's corporate secretary. On my left is somebody I'm sure every one of you in here knows already, Sheena Weir. She's the director of government relations. On my far left is Julia Bass. She's the policy counsel who has been involved with the paralegal issue.

At this point in time, Katherine Corrick is going to be giving you some background on the law society. Then I will present some of the views that the law society has on paralegal regulations in the hope of assisting the committee in its work.

Ms. Katherine Corrick: Thank you. The law society welcomes this opportunity to be back before the committee. We've been here, listening very carefully to the submissions that have been made, and hopefully we'll be able to address some of the points that have been raised.

The Law Society of Upper Canada has been in business for about 200 years. It has 200 years of experience in regulating the providers of legal services in Ontario.

The organization was established in 1797 and we currently regulate more than 37,000 lawyers in Ontario.

Our mandate is, and always has been, to govern the providers of legal services in the public interest. This mandate, which finds expression in a role statement adopted by the law society in 1994, will now be enshrined in the Law Society Act by this bill.

We pride ourselves on being a modern and transparent regulator. We recognize that the business of professional regulation is not static, that it must be looked at and re-examined from time to time in terms of the social context in which it's operating, and professional regulators must adjust their processes and systems to meet with and exceed the ever-increasing expectations of the public. I hope an examination of the law society's processes will reveal a regulator that takes this responsibility very seriously and that continues to strive to be modern, transparent and fair.

The last time we appeared before this committee, in 1998, we were seeking amendments to the Law Society Act to provide us with more modern and effective tools to regulate the profession. We have a very well structured system of intake, investigation, prosecution and adjudication to address public complaints about lawyer misconduct, incapacity and incompetence. We operate many other services for the public in terms of regulation. We have a trustee service which is responsible for taking on abandoned law practices to ensure that clients continue to receive the service they need. We run a compensation fund that is paid for exclusively by lawyers to assist clients who have lost money due to lawyer dishonesty. We have established an office of a complaints resolution commissioner: former Ombudsman Clare Lewis. He is an independent officer who reviews the law society's handling of complaints and investigations and can make decisions about the law society's handling and the decision to close a complaint file.

We have a spot and focused audit program designed to ensure the integrity of lawyers' financial records and to promote competent record-keeping.

We have practice management reviews which target practice management issues to ensure that there is competent service delivery to the people of Ontario.

We have a private practice refresher program to ensure that lawyers who have been out of private practice for five years or more do not return to the service of members of the public until they have taken a refresher program.

We have started, in May of this year, a new licensing process designed to ensure that the people who are called to the bar of Ontario meet minimum standards of competence.

We offer continuing legal education programs to support lawyers in their efforts to maintain their competence, and we offer practice management support tools designed to assist lawyers to maintain their competence. That includes things such as online material, practice management guidelines and self-assessment tools.

In brief, we have an infrastructure designed to ensure that the people of Ontario are served by lawyers who meet high standards of competence and honesty.

Mr. Simpson is going to take you through the law society's consideration of paralegal regulation.

1410

Mr. William Simpson: As most of you would know, there have been attempts made since the 1980s to regulate paralegals. Paralegals are a group that was actually created by either this Legislature or the Parliament of Canada when they allowed agents to go into various different tribunals, courts and so on. It has been set up in such a way that agents have been allowed to do these things independently over the years. However, there have been a number of problems, a number of complaints have come in and so on, and everybody has agreed for a long time that there should be regulation. It has never progressed to the point that we're at now.

Back in the 1980s, Terry O'Connor tried to come up with a bill. It didn't go anywhere. There was the Ianni report. The Peter Cory report came out in the early 2000s, and perhaps it has spurred on more attempts to get it. The previous government was dealing with it in much the same way, I think, as this government is dealing with it. You heard from Paul Dray, I understand, who was appointed as a lay benchers by the previous government. Paul Dray is a person who has been involved in consultations.

I understand Margaret Louter and Stephen Parker will be addressing you as well. They were part of the consultation group that met with lawyers and others back in 2000-01-02 and came up with a framework report which has actually been a very good help when we got to the point of being asked by the Attorney General this year to come up with and devise a scheme whereby the law society would be the regulator. This was something that was asked of the law society. It makes a lot of sense for the law society to be the regulator inasmuch as, as Ms. Corrick pointed out, we've been regulating legal services for over 200 years. To have one body regulating legal services makes an awful lot more sense than having a number of bodies, which inevitably ends up with some confusion in the public and everybody else.

In any event, we started with the proposition—we were asked by the minister, the Attorney General, if we would consider it. We had a debate. It wasn't unanimous. I heard last week when I was here a little bit Mr. Kormos asking why the law society should be the regulator and so on. If the law society, having been asked to do it, were to refuse—up till now a lot of lawyers didn't want anything to do with paralegals. They would rather have had them not in existence. There's been an evolution since the 1980s, into the late 1990s and so on. Paralegals are accepted as a body that is there, that there are a number of good paralegals, and the number of good paralegals we've talked to want this legislation to go ahead for the simple reason that it gives them the opportunity to come and have a profession. They're a part of the law society and they want it to happen. They know, however, that

some of their people—one party I heard last week was complaining about some of the paralegal competitors he had who were not following rules, regulations or anything. Good paralegals want legislation.

In any event, before this task force report was made and reported to convocation in September 2004, we spent the summer going to various parts of Ontario and meeting with all sorts of groups. I'm not going to go into them; they are all listed in the document that we've given you here. That group of people really assisted our task force in coming up with a report that was adopted in convocation in September 2004 and was presented to the Attorney General at that point in time. The portions of Bill 14 that deal with paralegals are basically those parts that have come out of this document. Probably it's not perfect—I would never claim that anything I've done has ever been perfect—but it is an opportunity. It has been an attempt by a whole group of people to do something that has been a problem for many, many years. What we've done is come up with a number of recommendations. Most of them have been brought in to Bill 14.

I've given you a copy of the report. I don't want to go through it all, but you will see in it a number of key aspects. The overview is that basically we are asking for your going to regulate paralegals in a parallel system to regulators regulating lawyers. You're going to have to be of good character. You're going to have to show a minimum educational background, pass tests, be bound by a code of conduct, carry insurance and pay into a compensation fund. Those are the things that are going to happen.

We know there are going to be people who require exemptions, and the question is whether it goes into the bill or whether it's done by the law society. If it goes into a bill, it's cast in stone, and if you miss somebody, that's a problem or it could be. If we do it by law, it can be amended to ensure that anybody who was left out, who is not exempted, is brought into it at the earliest opportunity. It's always been accepted—and you'll see in the task force report—that unions, for example, are going to be exempted. We have no interest in regulating mediators, and they are going to be exempted, if in fact they come within the definition of "legal services."

Just talking about the definition of "provision of legal services": It's a broad definition but it's very, very similar to the definition of the practice of law in a number of other provinces. BC and Nova Scotia in particular have wording that is almost identical to what you'll find in Bill 14. So it is something that is there, is needed, to define what it is that we're regulating. We can't have it out in a vacuum.

It talks about grandparenting. I don't think I want to get into that, because it's so obvious that we've got to have grandparenting and I don't want to take up all the time. The governance structure of this is something that is designed to be as even-handed as it possibly can be. What we said was that we would have a committee of 13 people, five of whom would be elected by benchers lawyers, three lay benchers and then five paralegals.

Paralegals would be elected by their own people and they would be there. Two of those paralegals would also be benchers off the law society and would be able to vote and talk on any legal topic or any topic involving lawyers or anybody else, because that would be their position.

The other thing we did was say that the chair of that committee must be a paralegal. So that person would be the one presenting to convocation and doing the various things that have to be done. Of course, we know that a lot of things have been left to the law society by Bill 14. All we can do and have been doing at this time is as much educational as we can, we've talked to the colleges and so on. We are as ready as we can be until this legislation is passed. Only at that time, however, can we get to fill out this committee to actually move ahead with doing some of the other things.

1420

It talked about nomenclature, and that's on page 35 in that report. The reasons there why we didn't suggest that the word "paralegal" should be defined: First of all, the proper definition of it is very difficult, and of course—I know it's been pointed out to you before—"lawyer" is not in the Law Society Act either. It's not something that has ever caused any of us any problem, the fact that it's not in the act, but everybody knows what a lawyer is. Undoubtedly, some of the people who have been appearing before you who are agents in court prefer to be called "agents in court." So it is just a situation, it perhaps doesn't matter, but it does matter to a number of people, for instance in-house paralegals. They want to continue to call themselves paralegals. They may not be able to do that if it were defined.

The educational requirements: You've already heard from the private colleges, Mr. Gerencser, and you've heard from Linda Pasternak and Wanda Forsythe, I understand, from the community college. They have been working with the law society and are happy that the scheme is going forward because it gives what they're doing a lot of credence and a lot of credibility.

We have a college advisory group that we have been meeting with over the years since we put this forward and since it was contemplated that we might be the regulator. We would want to have students as well as paralegals involved with that college advisory group in the future, and those, I understand, are helpful suggestions that have been made here.

If the legislation is passed, the implementation of this report will then start, and the law society is going to have to be accountable for it. There's a five-year review period in it. You say, is this putting the fox in the henhouse? But the long and short of it is that lawyers—and I don't know whether to include political lawyers in this or not—have a general basis of being fair, other than perhaps in this type of situation. But seriously, lawyers do have a reputation of being fair. That's where the judges have been coming from for many, many years now. The basic fairness, and people who are elected as benchers are not always—the persons who practise law are not always enamoured of the law society. The law society doesn't

represent the lawyers. The Ontario Bar Association does, the County and District Law Presidents' Association does and so on. Hopefully the Ontario paralegal society—I keep getting their names mixed up—that type of organization, will have a role similar to what the OBA has and they will be representing their members and trying to get the best possible thing for their members.

But the long and the short of it is that we've been asked to take on a task. We're prepared to do that. We think we can do it in a fair manner that will in fact be something that will instill more confidence in us and in the future so that in five years, when this has gone through, there will be a few problems, but there won't be very many and that will be that.

One thing I didn't talk about was the scope of practice, and I should do that only because when we looked at trying to do this, we had all sorts of lawyers say that paralegals shouldn't be allowed to do Workplace Safety and Insurance Board work after a certain level or they shouldn't go before the Financial Services Commission of Ontario, FSCO, and so on.

We also had paralegals suggesting that they should be allowed to do virtually everything from mergers and acquisitions down to family law—to everything. What we did was try to take a practical approach and say, "If this is ever going to get done at this point in time, let's start with those services that are recognized as being permitted by law." That's where we are looking at starting with. It doesn't mean it's always going to stay that way, but if there were any other attempts at either reducing or increasing the role of legitimate independent paralegals at this point in time, I don't think we'd be talking about this bill as being almost ready for third reading. We'd be wondering how we're ever going to get it drafted.

Anyway, I thank you for your time. If we have any time left, I'd be glad to answer any questions.

The Vice-Chair: Thank you very much. We have about seven minutes left and I believe, Mr. Kormos, you have the lead.

Mr. Kormos: Thank you kindly. Having said all of that, you along with other lawyers who have appeared here are incredibly skilled persuaders. You convince judges to do things that cause the general public to shake their heads. You convince juries to do things in the interests of your clients. You persuade these people. You talk about lawyers as being inherently fair. I think that's a fair enough observation. Why, then, hasn't there been any effective persuasion of any significant group of that community of paralegals out there that there's a place for them within the Law Society of Upper Canada?

Mr. William Simpson: I've talked to a lot who were quite happy, I've talked to some who are not, and to some who for their own reasons are concerned about the law society. I don't know that a person who has been convicted of crimes is going to be very a happy to come in.

Mr. Kormos: They can get appointed to the Senate. They don't need the law society.

Mr. William Simpson: But we know there are people out there practising as paralegals at this point in time. If we, tomorrow, said anybody could come in as a paralegal, didn't have to show good character, we could win those guys over very quickly.

Mr. Kormos: But I'm not suggesting that. You know I'm not suggesting that. I'm talking about standards.

Mr. William Simpson: You are in part, because there have been in fact people here who have had that type of problem.

Mr. Kormos: Then don't admit them.

Mr. William Simpson: We won't.

Mr. Kormos: Well, good.

Mr. William Simpson: But they have to show good character. That's one of the reasons. The PPAO imploded over this because they had a large group of people who wanted the law society to regulate but another large group who said, "Well, that's not going to help us any. We don't want the law society to regulate," and they backed off. It imploded because of that division between them, as I understand it. So I have talked to a lot. The agents in court who were here last week are quite happy. They talked to me about it both before and after. I had lunch with the three who were here a few months ago. They accepted the law society would be the regulator. They weren't upset about it. Perhaps, if they had their wish, they would have said, "No, I would rather have somebody else," but they've been quite happy. They are quite happy with the law society being the regulator.

1430

Mr. Kormos: They said, "Anybody but the law society."

Mr. William Simpson: That's what they said to begin with, that they had that view. Most lawyers 10 years ago would have said nobody—the law society shouldn't be there. But who else regulates legal services? There's nobody else. If you start to try to put together any new regulatory body, you're going to be mired for the next number of years trying to do it, one way or another.

Mr. Kormos: I'm not quarrelling with you. What I'm asking you is, why haven't some significant members of the paralegal community come here and endorsed this? I'd be pleased. The agents in court who were here—as I tell you, Mr. Zimmer darn near swallowed his bubble gum, because he wouldn't ask them the question. I finally asked them the question. They said, "Anybody but the law society." Look, I wish they had said something different, but they didn't.

Mr. William Simpson: The long and the short of it is a lot of the paralegals are getting ready to come in. Why shouldn't it be the law society when you look at it from a practical point of view? It's a body that has been regulating the delivery of legal services for years, and that's what we're wanting to continue. Besides which, we were asked to do this.

Mr. Kormos: I appreciate that. Thank you kindly.

The Vice-Chair: Thank you. Government?

Mr. McMeekin: Mr. Simpson, I and my colleagues appreciate your presentation and your report. Your

reference to good character is interesting. In the United States, there are three requirements to be President: You have to be at least 40 years of age, be born on US territory and be of good character.

Mr. William Simpson: I'm at least 40 years of age.

Mr. McMeekin: I note with some interest that there seems to be an emerging consensus, notwithstanding some of the remarks you've heard, that paralegals need to be regulated. I haven't heard anybody—sorry, there was one gentleman who came in. He didn't like any regulation of any sort. The guy was running for office in Mississauga or whatever. But there seems to be that consensus, and there seems to be some agreement that there needs to be some grandparenting and some exemptions. The alternate suggestion is, if it's anybody but the law society, then who? And if it's a self-regulatory kind of regime, which many people have been suggesting—I don't know what happens in BC. I know BC rejected—

Mr. William Simpson: Paralegals have not been as big an issue in BC as here.

Mr. McMeekin: It's not as mature an industry, is it?

Mr. William Simpson: Yes, and Ontario is the only one that has moved ahead on it.

Mr. McMeekin: Let me come at it out of centre field here, then. If not the law society, if the paralegals were self-regulatory, what would be the advantages and disadvantages of that from your perspective?

Mr. William Simpson: Well, a number of disadvantages: One is, first of all, the who and how and why, and all those little things, to set it up. The cost of it would be—

Mr. McMeekin: All the definitions—

Mr. William Simpson: All of that, but then you've got two bodies who are doing the same thing. They're both regulating the delivery of legal services. You end up with an ongoing situation that you have presently in England. England had a number of associations, a number of things, and those regulatory bodies are now going to have an oversight body, just because, amongst other things, there are too many that are out there, and at this point in time there is no real alternative to doing it.

I wasn't always a fan of having the law society as the regulator. Even when I became a benchler, I didn't think that the law society should be, but as I delved into it more and more, I came to the conclusion that it made more sense than anything else—not because this is going to be a feather in the law society's cap. I can tell you that putting this forward is going to change what the law society looks like to a great extent. But from the point of view of protection of the public, from the point of view of getting something up and running in a reasonable fashion and in a reasonable time period, the law society can do it. I don't think it could be done in a quick fashion anywhere else. I think it has already been indicated that the paralegals themselves are not able to be a self-regulating body at this point in time.

Mr. Runciman: Thanks for the presentation. I personally haven't reached any conclusions with respect to the appropriate regulator here, but I share Mr. Kormos's concern that we're not hearing from people in the

industry who are supportive. The one gentleman, Mr. Dray, who is a benchler, to some degree colours the contribution.

I think that it might have been helpful as well if there had been some sort of olive branch extended to the industry, whether it's membership, associate membership, some sort of effort in that regard. I think that some of concerns we're hearing in some of the testimony have perhaps been generated by the lack of specifics and comments.

There was a good witness here this morning, Mr. Stewart, who's a lawyer and a paralegal. He provided us with a quote from Mr. Malcolm Heins, which said, "We need a wide definition of legal services in order to regulate, so that we are able to capture all of those individuals who may decide not to try to come in within the act. Otherwise, it's very difficult to actually prosecute them."

We've seen those references from other important members of your organization. I think perhaps there hasn't been the effort to try to win these folks over as part of this process and allay some of the concerns, which I think are quite sincere concerns. I don't think they're here just to try to escape regulation. I think that they have, in some respects, valid concerns based on some of the words that they've heard coming from members of the law society.

Mr. William Simpson: Let me just respond by going over two or three points you mentioned.

First of all, Paul Dray was the president of the PPAO, and he was there back in 2002 when the law society—no, it was more lawyers. I happened to be on it. Dick Gates from Windsor was on it, and Paul Dray, Mr. Parker and Ms. Louter were the representatives. We'd come back—and we had bigger groups. Paul Dray and the other two came to the conclusion that the law society should be the regulator at that point in time. It was only after that report came out that Norm Sterling, when he was Attorney General, appointed Mr. Dray, because of the way that I think that your government of the day was trying to move into that.

When you get into prosecuting, the quote that you talked about—when we talked to the paralegals, when we got into the aspect of unauthorized practice or people not being there, the paralegals were most adamant that there had to be a way of prosecuting their other paralegals who don't come into the fold, because why would they come in, why would they go through the hoops of being a regulated person when their competition down the street is not doing any of that? What happened was that they really pushed and pushed and said, "We have to ensure that this is going to be," so that in fairness, if there's going to be regulation of paralegals, those people who are coming in have to have a method of keeping themselves from being side-swiped by somebody who either can't be or won't be coming in and being a member. So I don't see that that's a criticism of it.

1440

As far as winning over, we have talked to a lot of paralegals. I've talked to a lot of them in all the various

meetings. A lot of them were very much concerned about the law society, but I think they were won over. We didn't go out and try to recruit who was going to speak before this committee, so we didn't go and suggest that people should come in. But I do believe that you're obviously going to hear from the naysayers for the most part when you establish something like this; you're going to hear from those people as opposed to the ones who are onside.

The Vice-Chair: Thank you very much, Mr. Simpson. We need to move along. I appreciate your coming in and picking up the gap for us and certainly appreciate your presentation.

CANADIAN UNION OF PUBLIC EMPLOYEES, NATIONAL OFFICE

The Vice-Chair: Our next deputation is by teleconference, and I believe that John Elder, director of the Canadian Union of Public Employees, National Office, in Ottawa is on the line. Mr. Elder?

Mr. John Elder: [*Inaudible.*]

The Vice-Chair: I think I hear something, but—Mr. Elder, just give us a moment. I do believe that you are hearing us, but we're not hearing you. Mr. Elder, are you on the speakerphone?

Mr. Elder: [*Inaudible.*]

The Vice-Chair: I'm sorry, we can't hear you. Would you please go to the regular headset.

I'm afraid we have a bad connection. Mr. Elder, would you hang up, and we will call back. Thank you.

Mr. Elder?

Mr. Elder: [*Inaudible.*]

The Vice-Chair: We're still having the same problem. Bear with us, Mr. Elder. We're trying.

I'm going to ask that we take a recess for five minutes while we try to work out the technical problems that we're having.

The committee recessed from 1445 to 1453.

The Vice-Chair: I'm going to call the public hearings of the standing committee on justice policy back into order. We have on the line by teleconference Mr. John Elder. I want to say first of all, Mr. Elder, thank you very much for your patience. I think we've finally been able to work out our technical difficulties. My name is Maria Van Bommel. I'm the Vice-Chair. You are the director of the legal branch for the Canadian Union of Public Employees in the national office in Ottawa.

Mr. Elder: That's correct.

The Vice-Chair: Thank you. You have 30 minutes to do your presentation. If you do not use up the entire 30 minutes, that gives opportunity to members of the standing committee to ask questions or make comments on your presentation. Please proceed and identify yourself for the record.

Mr. Elder: Thank you, Madam Chair. My name is John Elder. I am director of the legal branch for the Canadian Union of Public Employees, and with me today is Susan Coen, who is a senior officer, also in the legal branch of CUPE.

We appreciate very much the opportunity to address the committee. I thank you for that, and I also thank you for making a convenient way to do so through this teleconference.

We really come before you today to make two points. First of all, in a general way, CUPE supports the notion that paralegals should be regulated, that there should be some supervision and licensing of these individuals. Secondly, our main concern is that this licensing and supervision process should not result in a situation where the officers, officials and employees of trade unions are subject to such regulation.

To begin with, let me just say a bit about the Canadian Union of Public Employees. We are, as you may know, Canada's largest union, representing now over 550,000 employees across Canada. In Ontario, we have well in excess of 200,000 members and they work for more than 1,100 employers.

All of our members in CUPE, in addition to belonging to the national union, belong to a local union, and it is through this local union that they receive most of their assistance, advice and service. The affairs of each local union are democratically controlled by its members. They elect an executive and other officers of the local union. Those elected officers may, from time to time, appoint other persons to act as union officials—perhaps as a union steward or on a particular committee. It's these individuals who do the work of the union in a large part. Also, as a national union, we employ staff to assist our local unions. Those include servicing representatives who, by and large, come from the rank and file membership—they're employed on a full-time basis to assist local unions—and also some specialist staff such as lawyers, communications representatives and researchers.

As I said, CUPE does not object to the general aim of schedule C of Bill 14 to supervise and regulate paralegals. We believe that the public should have some measure of protection in the provision of these services. To make a very obvious point, the contrast between the degree of education, certification and qualification and then supervision required to practise law in the province as a lawyer contrasted with the lack of certification, control or required education to act as a paralegal is very striking. Just as the public deserves some consumer protection with respect to the services provided by lawyers, we believe it is entitled to the same sort of protection with respect to services provided by paralegals.

I'm using the term "paralegal" broadly, as I believe it is defined in the legislation. In the labour relations context, for example, we most often encounter individuals who would meet the criteria of being regulated under this legislation as consultants. They are labour relations consultants. They may be acting for employers or trade unions or individual employees, but that's generally the term they use to describe themselves.

We're not opposed to persons providing these type of legal services being subject to regulation, but we do

object to the potential intrusion into a union's administration and affairs if persons providing these services on behalf of the union to our members and potential members were subject to this kind of regulation, and particularly subject to this kind of regulation by the law society.

As I'm sure you know, workers generally organize and join unions so they can enjoy the benefits of collective bargaining, so they can be represented by a union, so that a union will negotiate on their behalf a collective agreement and, in turn, enforce that collective agreement. This is a great majority of the services that a union provides to its members. When it provides those services, particularly when it gives advice to a member as to whether the collective agreement has been violated, whether the member should file a grievance against the employer, whether that grievance should proceed to arbitration, they are unquestionably providing legal services as that term has been defined in Bill 14, considering the broad definition contained in the bill.

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In addition, unions and their officials regularly provide to our members assistance and advice in other employment-related areas. This may relate to claims for long- and short-term disability, Canada pension plan benefits, employment insurance benefits, workers' compensation benefits—areas that are, strictly speaking, outside the narrow ambit of collective bargaining but still within the range of services that unions may choose to provide to their members.

We say there can't be any doubt that when union officials provide those types of assistance, or assistance within the area of collective bargaining, they are providing legal services, as again broadly defined in Bill 14. We are concerned that this not result in these union officials being subject to licensing, supervision and regulation by the law society or by some other body that might be tasked with supervising paralegals. The great bulk of the assistance that is provided by a union to its members is provided by volunteers. It's provided by co-workers who may be union stewards or elected officials, but they are lay people and they provide the assistance. They are, as I have said, generally elected by the membership. It simply wouldn't work to have a situation where these people, before they could run for election, before they could hold office as the union steward, would need to obtain some licence from some regulatory body, perhaps pass some certification requirements and so on. So we think the situation of unions in this regard needs to be recognized and needs to be excepted from this attempt to regulate the work of those who provide legal services but are not lawyers in the province of Ontario.

This does not mean that the employees we represent, our members, are without recourse if they want to complain about the quality of representation they have received. As you probably are aware, the Labour Relations Act now provides an avenue of redress for employees represented by a trade union who are not satisfied with the representation they have received. That

is specifically through the filing of a duty of fair representation complaint to the Ontario Labour Relations Board. The duty of fair representation contained in the Labour Relations Act requires that a union not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of employees in a bargaining unit that it has been certified to represent. Any employee represented by the union can complain about the quality of representation. They have access to a relatively quick, inexpensive and informal complaint procedure and to a remedy where the labour relations board determines that the duty of fair representation has not been fulfilled by the union. So we say in that respect that employees represented by a union do not have the same need for what I will call consumer protection that members of the public may have.

We do want to acknowledge that Bill 14 would allow the law society to exempt from this type of regulation certain groups or individuals, and we further acknowledge that the law society has committed in writing, in a letter to the president of the Ontario Federation of Labour, that it has no intention of regulating trade union officers, officials and employees in the services they provide. While we draw some comfort from that commitment, we have to say to you that this is not a matter that the Legislature should leave to the decision of the law society. It should not be for the law society to decide whether or not it is going to regulate the work and activities of trade union officers, officials and employees; it should be the Legislature that makes that decision. It's a matter of legislative policy, and the Legislature, we submit with respect, would be abdicating its responsibility if it simply turned this whole question over to the law society.

As a result, we request that Bill 14 be amended to provide a blanket exemption for officers, officials and employees of unions who provide legal services to members, potential members and any employee represented by the union. We do not believe that the law society should have any role to play in the regulation or supervision of a union in providing these services. We take it, from the law society's commitment, that it does not seek to do so, that the law society also agrees that it should not play that role. Accordingly, we are requesting that Bill 14 be amended to enshrine this exemption. Those are our submissions.

The Vice-Chair: Thank you very much, Mr. Elder. We still have about 17 minutes remaining, so I will go to the government side to have the lead in terms of comments and questions.

Mr. McMeekin: Brother Elder, it's good to have you on the phone sharing what has emerged as a bit of a pattern here. We've had many other groups, particularly those affiliated with our brothers and sisters in the labour movement, who have made some of the very astute observations that you've made. So I just want to thank you for that.

I really appreciate the affirmation, again, of that particular thrust. I was listening carefully when the law

society was here to hear some affirmation of their intention to grant that exemption. Notwithstanding, I note your concern about that, and I really appreciate it.

Mr. Elder: Thank you.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: It's Peter Kormos. I thank you for your submission. You may know that UFCW, OPSEU and steel have made similar comments. I think they're valid. They're very much on point. They address also the problem in the bill of the failure to define "paralegal." I think that's something that people are going to have to pay some attention to before this bill proceeds much further, so I appreciate your comments.

I should mention that we're still waiting to hear from paralegals who are eager to be part of a regulatory scheme that's conducted by the Law Society of Upper Canada. To be fair, there was one, but he also happens to be a bencher of the law society, so his perspective might be somewhat coloured, as Mr. Runciman suggested.

The Vice-Chair: Thank you very much, Mr. Elder. I certainly appreciate your patience while we tried to get our technology working. Have a good afternoon.

SMALL INVESTOR PROTECTION ASSOCIATION

UNITED SENIOR CITIZENS OF ONTARIO

The Vice-Chair: At this point in time, I would like to call forward the Small Investor Protection Association and the United Senior Citizens of Ontario. Thank you very much for coming in this afternoon. You have 30 minutes to do your presentation. If you do not use the entire 30 minutes, there is an opportunity for members of the standing committee to ask questions or make comments about your presentation. Before you start, could you please introduce yourselves for the Hansard record and then just proceed.

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Mr. Stan Buell: My name is Stan Buell. I'm president of the Small Investor Protection Association. We were incorporated in January 1999 as a national non-profit organization and we have close to 600 members in nine provinces across Canada. Thank you for inviting us to appear before the standing committee.

Ms. Marie Smith: I'm Marie Smith. I'm with the United Senior Citizens of Ontario. I've just become their president and I'm representing 300,000 senior citizens here today.

The Vice-Chair: Thank you very much. Please proceed.

Mr. Buell: We are concerned that the reduction in limitation periods for civil litigation erodes the rights of Ontarians to seek justice. In particular, we believe that seniors will be negatively impacted.

Since 1998, we have heard from many seniors who have lost their savings due to investment industry wrongdoing. Their experience indicates that it takes time for them to deal with such a life-altering event. This,

coupled with the fact that complaints handling and dispute resolution are largely in the hands of the investment industry or industry-sponsored agencies that seem to delay the process, means that many victims will statutorily be denied their right to seek justice through our legal system.

The investment industry and the regulators have inherent conflicts of interest. Rules and regulations lag behind the industry's creation of new and innovative products to tap the wealth of seniors and other small investors.

The proliferation of mutual funds and segregated funds makes it practically impossible for the average investor to select those that may be suitable. The result is that many funds are sold which are unsuitable for the investor. New products are created that are much different than they appear.

Principal-protected notes are sold as a product having the principal guaranteed and promising a high rate of return. However, the guarantee is based on hedge funds, which the regulations state should be sold only to accredited investors, yet these PPNs are sold to seniors, who are not accredited investors. The hedge fund company Portus Alternative Asset Management was forced into receivership by the OSC, and 26,000 investors are out \$800 million.

Business income trusts are being created and sold to an unsuspecting public as secure investments, also promising a high rate of return. However, there is a lack of regulations to properly define "return," which often includes return of capital.

The McLean and Partners red flag report at the end of August 2006 lists 11 business trusts that on average have cut their distribution by 41%, and their unit prices have declined by a staggering 24% in 2006. The report also indicates that nine energy trusts have, on average, cut their distributions by 33%, and their unit prices have declined by 12% in 2006.

These innovative products will cause many investors to lose their savings and by their very nature will lead to delays in victims taking action. They will end up being statute-barred from proceeding if limitation periods remain as they are now.

In addition to industry-accepted practices that breach or circumvent the rules and regulations, the development of innovative products, and strategies that evade the rules, the regulators provide exemptive relief by issuing exemption orders that permit the industry to avoid rules that ostensibly provide investor protection.

There is no authority that provides investor protection. For the last couple of years we have worked with seniors' groups to raise awareness of this issue and we are pleased to join with the United Senior Citizens of Ontario today.

In May of this year, SIPA made a written submission to your committee asking for reinstatement of the previous limitation periods. The following are some of the points raised. We stated, "It is inconceivable that a just society, as we claim to be, could allow regressive legislation to pass that erodes the rights of Ontarians and will

result in many victims of life-altering events, such as devastating loss of life savings, being victimized again when they are statute-barred from seeking resolution of their dispute through civil action due to reduced limitation periods."

We are particularly concerned that the incidence of seniors and other small investors losing their savings due to wrongdoing by the investment industry is much greater than perceived by the general public and our government. We estimate the losses at several billion dollars each year.

On June 16, 2005, when Senator Grafstein, chairman of the standing Senate committee on banking, trade and commerce, welcomed Mr. David Brown, then-chair of the Ontario Securities Commission, to report on the OSC town hall event, Senator Grafstein said: "The examination of consumer issues has been a revelation for many committee members who thought that the problems were well in hand in many areas."

Mr. Brown's remarks to the Senate committee on limitation periods were:

"Under the Ontario Limitations Act, 2002, a uniform two-year limitation period applies to all actions except those that are specifically carved out, such as actions by the OSC.

"Unfortunately, this two-year limitation period leaves plaintiffs with a narrow window for bringing an action. Although a number of considerations pause the clock, we have learned that aggrieved investors do not always discover the full consequences of a problem until two years have elapsed. For a life-altering event such as losing a chunk of your life's savings, it takes time to come to terms with the problem. Attempting to obtain voluntary redress from a dealer or adviser can consume valuable time. Investors who pursue arbitration must relinquish the option of court action. For all of these reasons, we suggested to the Ontario government that it would be well advised to take another look at this two-year cut-off."

On June 27, 2005, we stated in our letter to the standing Senate committee on banking, trade and commerce:

"Since our appearance before the Senate committee on banking, trade and commerce on April 14, we became aware that the Ontario Limitations Act has surreptitiously reduced the six-year limitation period to two years. We believe this is a serious issue for Ontario investors and may be an important issue for all Canadians.

"Presumably, those who are responsible for consumer protection must know that life-altering experiences, including the loss of one's entire life savings when one is trusting that our investment industry and regulatory system can be trusted to safeguard one's savings, has a severe impact on individuals.

"So severe is this impact that some victims have chosen suicide, rather than to continue life in this wonderful country of ours, after their trust has been betrayed by the financial services industry, and their hopes and dreams destroyed.

"Many of the victims (when they are finally able to deal with this type of issue) routinely take more than two years to find their way and learn how the regulatory system works.

"With a two-year limitation period it is obvious that many victims will be time-barred from the courts from seeking restitution, even when some of the industry's practices may be criminal in nature. Is this justice?"

Recently, SIPA received a telephone call from a single mother of two who lost her life savings of over \$300,000 in the year 2000. It has taken her time to deal with the issue, and she confessed that she had been suicidal. Since then, she has dealt with industry and the regulators. If the two-year limitation period had been in effect, she would have been statute-barred from seeking justice.

On June 28, 2005, Diane Francis wrote in the National Post:

"The move by some provinces to reduce the limitation period for lawsuits from six to two years tips the playing field even more against investors and in favour of the bank-owned brokerage industry.

"In Canada, a damaged investor has two remedies: A lawsuit or a complaint to the Ombudsman for Banking Services and Investments. This is not an autonomous government-funded agency but a dispute resolution service offered by the banks and brokers themselves in the hopes of averting expensive litigation.

"This process is not only unacceptable, because ombudsmen should be truly independent, but it's also arduous. Before an investor can benefit from this 'service' he or she must proceed through the accused bank-owned brokerage firm's manager, compliance officer and then the individual ombudsman of the bank involved.

"Once all that's finished, then the investor may take the case to the Ombudsman for Banking Services and Investments. But OBSI won't accept a case if the investor has already sued.

"All of which amounts to a Catch-22 because there is no way an investor could possibly jump through all those bureaucratic hoops within two years. And with the statute of limitations being shortened, investors don't have choices.

"Likewise, Canadian investors will find they have no legal remedy if they go to regulators such as the Ontario Securities Commission. That's because investigations often take more than two years, by which time they will have lost the right to sue."

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On July 18, 2005, Steven Lamb wrote for Advisor.ca: "This change is just another form of financial elder abuse," said CARP's Gleberzon. "Like the others on this panel, we urge the government to reconsider the legislation—to at least reinstitute the former time period."

I believe Bill spoke to your committee earlier today and recommended that the limitation periods be reinstated.

In the words of Larry Waite, president of the Mutual Fund Dealers Association, in his letter dated August 8,

2005, to the Honourable Michael J. Bryant: "We believe that investor protection would be enhanced in Ontario if the Limitations Act, 2002, were amended to reinstate the former six-year time window for commencing civil actions. We encourage the government of Ontario to restore the prior limitation period."

On September 29, 2005, James Daw wrote in the Toronto Star: "Susan Wolberg-Jenah, acting chair of the OSC, confirmed in an August 30 letter that officials there appreciate that the constraints of the two-year limitation period, combined with existing dispute resolution services, 'may have unintended consequences for small investors.

"We have shared this information with the Attorney General in a way that we believe is constructive and in the best interest of investors,' she wrote.

"We have also indicated our willingness to further discuss this matter with the government...."

Jim Daw also wrote that "David Agnew"—whom you also heard from earlier today—"the new chief executive of the Ombudsman for Banking Services and Investments, confirmed September 12 his office has also written to Bryant to outline some of the implications he sees for investors.

"We want to see investors treated fairly—not denied their rights because of overly restrictive time limitations, nor stamped into unnecessary and expensive legal actions."

In the autumn of 2005, Joe Tascona, MPP for Barrie—Simcoe—Bradford, submitted a petition to the Legislative Assembly of Ontario that stated:

"Whereas Bill 213, Justice Statute Law Amendment Act, 2002, enacted the Limitations Act, 2002, which provides for a reduction in the legal limitation period from six years to two years;

"Whereas the two-year limitation period in effect from January 1, 2004, is not long enough for investors seeking restitution after suffering serious financial damages due to the wrongdoing of the financial services industry; and

"Whereas the Attorney General's position is that plaintiff investor interests do not need further protection;

"We, the undersigned, petition the Legislative Assembly of Ontario as follows:

"That the province government immediately pass and implement an amendment to the Limitations Act, 2002, to provide an exemption for claims by victims of financial services industry wrongdoing so that no time limitation period applies to such claims."

Many who are concerned about seniors' issues have spoken out against the reduction in limitation periods. The only hope victims have for the recovery of their savings is civil action. To statute-bar them from proceeding is unjust.

We trust that this committee will see the validity of these concerns and take appropriate action to ensure that this injustice is reversed. We ask that the previous limitation periods be reinstated, or victims of investment industry wrongdoing be exempted from the reduced limitation periods. Thank you.

The Vice-Chair: Thank you, Mr. Buell. We only have one minute left for questions and comments. Mr. Runciman, you have the lead.

Mr. Runciman: Thank you very much. This is an interesting issue and very, I think, valid and legitimate concerns that you've brought forward and others today have brought forward as well. I think there's certainly an indication for Mr. Kormos and myself that we will pursue this on your behalf and on behalf of other small investors, if you will, to ensure that the appropriate amendments are put forward and the debate is carried forward on behalf of the people you represent and many others across this province.

The Vice-Chair: Mr. Kormos?

Mr. Kormos: Thank you, folks, both of you. Look, the exploitation and ripping off of seniors who have worked so hard for so long to save modest amounts is just a shameful blot on this province. It's just remarkable. We've seen it in our constituency offices, whether it's stockbrokers—we've seen some of the churning that goes on. There's no reason for 80-year-old people to be trading stock on a weekly basis in the stock market. The only person making money there is the guy holding the poker game, taking the rake. That's the stockbroker; similarly with the mutual fund industry. Again, some of the ill-educated dealers who are ripping off our folks and our grandfolks—it's criminal.

It's remarkable that so much has been said, including by the former chair of the OSC. I think what we might do is ask the Ministry of the AG, if they could, to give us some sort of indication of where the ministry is at. Are they preparing legislation, are they contemplating these various commentaries from a policy perspective or not? Again, I think to be fair, if they let us know that they in fact are contemplating them, we can go from that point forward; but if they're not, I say shame on them. Mr. Runciman and I have already talked to the committee about our plans to introduce an amendment in that regard and to seek unanimous consent to have it found in order.

The Vice-Chair: Thank you. Government: Mr. McMeekin?

Mr. McMeekin: Thank you both for your excellent presentation. It's consistent with some other things we've heard. I'd just say for the record that anybody being exploited or ripped off, be they seniors or younger or whatever, is something that we want to have legislation in place to protect against. I think Mr. Kormos said earlier that sometimes governments and members from all three, four, whatever number of political parties make inadvertent decisions, maybe even inadvertent errors, and it needs to be looked at.

You're not suggesting that there's no personal responsibility for monitoring investments; you just don't want to see investors' hands, particularly senior investors' hands, hamstrung and tied so that there's not some reasonable period by and through which to identify concerns and respond to them. Would that be a fair characterization of your position?

Ms. Smith: Sometimes it takes seniors more than two years to even admit to the public that that has happened. I

have neighbours who wouldn't admit it to anyone for over two years, and then finally they came to a neighbour, then their family. So I do think that it takes more than two years for a senior to come to terms with something like that. If they've lost their savings, they are just devastated and they are suicidal. To me, it is one of the worst types of elder abuse. Of course, I sit on the committee for elder abuse for the province, as well, and I feel this is every bit as bad as any of the other elder abuse we have.

Mr. McMeekin: Marie, you've done some exemplary work there. I thank you both for coming out.

Ms. Smith: Thanks, Ted.

The Vice-Chair: Thank you as well from the committee. We appreciate your taking the time to come out this afternoon to bring your perspective to the committee.

HENRIETTE CASIER

The Vice-Chair: I believe we now have our next deputiation, by teleconference: Henriette Casier.

Ms. Henriette Casier: Henriette Casier.

The Vice-Chair: Henriette, you have half an hour to make your presentation. If you don't use up the entire half-hour, then there is opportunity for members of the standing committee to ask you questions or make comments about your presentation. If you would identify yourself and anyone else who is on the conference call with you for the Hansard record, and then proceed, please.

Ms. Casier: I'm on the call by myself. I'm a paralegal, and I operate in the municipality of Chatham-Kent. I'm calling with regard to Bill 14 and requesting that schedule C be removed from Bill 14. I'm very concerned as to the affordability of paralegals for John Doe Public, if you will. I try to offer a reasonable service at an affordable cost to most people. I've had input from different people that certainly I'm more affordable than a lawyer would be. I realize I cannot give legal advice, and I do not want to give legal advice, but I assist people in doing that. Now, if Bill 14 passes, especially part C of that, we will be forced to be regulated by the lawyers.

1530

My basic question is this. You wouldn't be asking a chartered accountant to regulate the CGAs, the certified general accountants. I just can't understand why you would be allowing lawyers to regulate paralegals. By definition, I believe that a paralegal can do something for yourself or for anyone that they could do themselves, but they don't know how. They simply don't know the ropes. We have an insight into those ropes, and we help them through it. If we had to be under the authority of the law society, certainly our costs would go up and the affordability would go up accordingly. I would question that we would even be able to continue to operate. At the rates we charge, it doesn't leave a whole lot of margin, because we are giving an affordable service.

I'm trying to read my writing. I apologize.

The Vice-Chair: Take your time.

Ms. Casier: I just don't know how you would regulate it, because, as I said, a paralegal can prepare documents for someone—anybody can do it themselves, but they don't know how. We do it on their behalf, and it assists in the process. I think if you talk to any of the court clerks and they have an uncontested divorce prepared by an individual, she walks in with her grocery bags and says, "Here, I want a divorce," and they have to try and wade through that, or a paralegal comes in with a neat, tidy document that can certainly be processed through the system much more quickly. If this bill passes as such, I think the public would be at a disadvantage.

Now, I have a petition that was signed by clients over the last two weeks that they feel the same thing. I think we would lose a lot of the facilities for affordable preparation of documents for most people.

I don't know what else there is to say. I'm certain that you've heard it all. I just wanted to make it known that as a paralegal, I look out for the best interests of the public. I deal basically in uncontested divorces, and landlord and tenant issue, small claims, but I do other things as well—for a simple will, something that there's not a whole lot of—I don't know, if there's a firm heir attached to it and certainly just a simple will. Somebody who lives in an apartment, they don't have a whole lot of assets, and they can't afford to pay a lawyer a lot to do something like that. I just feel that Bill 14 with schedule C included is going to leave a lot of people without proper representation.

I am a member of the Paralegal Society of Ontario, and I think that, given time, we could form the proper foundations for it without being regulated by the lawyers. Paralegals practise in various areas right now, and they would certainly be limited. I do some highway traffic as well, and we would certainly be limited in what we can perform and again limit our income and limit our viability as a business if the new legislation should happen to pass.

The Vice-Chair: Thank you very much. That gives us about 24 minutes of remaining time. Mr. Kormos, you have the lead.

Mr. Kormos: Thank you kindly for calling in. I understand your position. It's certainly problematic.

I'll mention to you what I've had occasion to reflect on so many times. When the BSW/MSW social workers folks were getting legislation that created a college to regulate them, the community social service graduates fought to get included. The BSW/MSW types didn't want them included. They figured it was beneath them to belong to the same regulatory body.

So if paralegals had membership in the law society and had the ability to elect a more representative number of benchers than merely two, which means that paralegals would be more directly involved in the decisions made about their profession, would that be at all persuasive to you, about the law society becoming a bigger family?

Ms. Casier: I don't know. I don't have a problem in Chatham with lawyers per se. I do understand that in

Toronto it's a more competitive market. I can just foresee that the lawyers would not allow paralegals to do—they would very seriously limit their abilities to do that. I guess having more paralegals on the bench may help. I'm just not sure that this bill should be passed that speedily and that there shouldn't be more consideration given to it in its totality. I don't know that having a few more paralegals would still make it more affordable.

As I see it, if as paralegal members we had to become members of the law society of Ontario, we would possibly have to make a deposit of \$5,000 or whatever similar; I don't know what the law society fees are or anything like that. But if it came to that and I had to put that kind of money up, I would not be able to do that. I would not be able to function, so I would automatically be out of business. It wouldn't matter that there were some paralegals on the board directing what I can or cannot do. If I have to become a member of the law society, I don't know that I or any small individual paralegals would be able to operate. It just wouldn't be financially viable.

Mr. Kormos: Once again, I hear you, and that's another problem in that nobody has told any of us here—I don't know, Mr. Runciman; did anybody tell you?—what the anticipated fees would be for the paralegals.

Ms. Casier: And I guess that's really what we're concerned about.

Mr. Kormos: So that's of concern, yes.

Ms. Casier: Yes. And as soon as I see that we have to become a member of the law society of Ontario, as a paralegal I'm going, "Okay, what kind of fees are they going to assess us?" I can't afford it. I carry errors and omissions insurance. I do everything that I need to do, and as it is now, it's affordable for me. But if there's a fee assessed in becoming a member of the law society—and I don't know how they can regulate any of this without a fee being attached to it—am I going to be able to operate anymore? I don't know.

Mr. Kormos: I think the information contained in the report to convocation was \$3 million start-up and \$1.3 million a year, give or take. I don't know how many paralegals that's based on. The other problem is, we've only been given very rough estimates of how many people are so-called "paralegals" in the province. What percentage of them wouldn't meet a minimum standard? Surely some won't, because I know there are some paralegals out there who aren't particularly impressive. You know them too, don't you?

Ms. Casier: Oh, there are those out there, I don't doubt. I will give you that, but generally speaking they weed themselves out, especially in a smaller community. If people use them, they get to know them, or they don't, whichever.

Mr. Kormos: I agree. I come from Niagara, small-town Ontario. Although I don't practise law at the moment, I know the lawyers down there use paralegals a lot. POINTTS, for instance, which has some excellent staff, is used regularly by lawyers who refer clients to POINTTS, because lawyers aren't going to go to high-

way traffic court to fight a \$100 or \$200 ticket when their hourly fee is \$300 and \$350 for starters.

Ms. Casier: Exactly, and they're going to continue to allow us to do that. But if you're talking about some sort of a fund that needs \$3 million, I'm sure that you're going to ask for input from everybody to do that.

Mr. Kormos: Oh, no. I think the law society indicates they want the taxpayer to pay that. They want the government to pay the upfront—and we haven't heard from the government whether it's going to be paying that.

We haven't heard from the government about whether or not regulated paralegals are going to be part of the legal aid system and what additional expenditures are going to be required from legal aid because of this new community of practitioners. The fact is, of course, that legal aid is grossly underfunded at present. Who's going to make up the shortfall if you've got a community of paralegals? Because one of the attractions for paralegals is that maybe, by virtue of being regulated by the law society, they can then become capable of billing legal aid for certain things. The government hasn't told us where that money's coming from either, have they?

Ms. Casier: No. This may be off track; I don't know. Any time you get the government involved in one of these projects, in my view it's a make-work program, so they're going to employ a whole lot of people to do this \$3 million, and what is the purpose of that? We are a functioning, viable society as we are right now, without any changes to the bill. If we become a paralegal society of Ontario and you allow us to eventually regulate ourselves, we can come out with regulations that will save that cost. Even if the government does fund it, that comes from you and me as taxpayers anyway. It's just another one—I'm sorry, this is off topic, but I have a lot of beefs with government make-work programs. Again, this is off topic, but there was a gun registry. They have spent millions of dollars, and now they're going to talk about spending millions of dollars to return the \$35 fee to John Doe. That's ridiculous. That is the type of program that I can see this becoming, not benefiting anybody.

1540

We're working, as we are right now, without Bill 14, and I don't see any reason for us not to continue to do so. All of the clients that I have, certainly as far as I'm aware, are satisfied with my service. If they're not satisfied, we have the errors and omissions insurance. As it works right now, it is working. If you, as an individual, want to prepare a document, you can do it. If you don't know how to do it, you hire a paralegal to do it. If you get into this legislation and all of these funded programs because of Bill 14, to me, it's just another make-work program.

The Vice-Chair: The government side.

Mr. Balkissoon: I just wanted to say thank you very much for your input. We've heard similar comments from several of the other deputants. Thank you for taking the time to join us.

Ms. Casier: Again, I don't feel that a change allowing more paralegals on the board is going to do it. I don't

think the bill, as it is right now, is going to benefit anyone, and I don't think this is the type of legislation that we need to regulate paralegals. Allow us a few more years, and hopefully we'll be able to come up with something, or let it go as it is. I've been in business for 10 years and it has been working just fine. I don't understand the need for all of this at this point in time.

Mr. Runciman: I'll join with the others in thanking you for taking the time to be involved in the process. You said you've been practising for 10 years. What did you do prior to becoming a paralegal?

Ms. Casier: Actually—and I guess I'm hoping to be grandfathered in anything that's in—prior to that, I worked in a bank for 24 years. My job description was in non-negotiable securities current account authorities. I did sue some small claims actions as well, so I had exposure to all of these things in the bank. Then I started doing this, just as a secretary, but I am the paralegal in the office now. The person who was doing it left for the reasons that were referred to earlier. I have been doing it on my own for 10 years.

Mr. Runciman: So you sort of evolved into other areas in terms of scope of practice?

Ms. Casier: No. Basically, our scope of practice is the same. I have been doing that since we started 10 years ago.

Mr. Runciman: We've heard some conflicting testimony about paralegals generally in terms of where they fall with respect to this legislation. I just wonder what contact you have with others within your profession. You mentioned that you're a member of the paralegal society. Do you have much contact with other practitioners?

Ms. Casier: There are, as far as I know, three or four of us in the city of Chatham, and, yes, I certainly contact them as well. Mr. Frank Sysel is in town, and there's Mr. Bill Marchand. Then there's Gail Baldwin. She's in Ridgetown. We come in contact with each other at Small Claims Court and various other venues, yes.

Mr. Runciman: They have similar feelings about the legislation?

Ms. Casier: Definitely. None of us sees any benefit in the legislation other than I guess we'll retire early, because there's no way we can afford to become a member of the Law Society of Upper Canada. It's not going to work.

Mr. Runciman: Are there any other concerns, though, beyond the affordability issue, in terms of your ability to do your job—perhaps the limitations placed on you—that may be onerous?

Ms. Casier: Certainly. In Chatham, I've had lawyers refer people to me for an uncontested divorce. They say, "Oh, contact them. They'll do a good job for you, because I don't do that." But in Toronto, that would not happen. You would have lawyers who say, "No, they cannot do an uncontested divorce."

This summer, I assisted in the preparation of Family Court documents, which I don't normally do. The individual I did it for had come to me from three other lawyers, simply because she could not afford the fees.

She said, "Here are the forms. Help me type them up, because I don't know how." And that's all I did, just typed up documents for her. If they pass this legislation, I wouldn't even be able to assist her. She's one of the people who fell in the cracks. I believe—and I'm not 100% sure—if your income is over \$24,000, you do not qualify for assistance; if it's under, you do. She was just on that break-even point or borderline, unfortunately. Her bookkeeping records were not the greatest. She couldn't prove that she needed assistance so she couldn't qualify for assistance, yet she did not have the funding to obtain assistance from a lawyer. So I was able to help her out at a reasonable cost.

Mr. Runciman: That's interesting. You know, this legislation is titled access to justice.

Interjection.

Mr. Runciman: Yes, that's my concern, that there's going to be less access and perhaps unaffordable.

Ms. Casier: It's less access, because I wouldn't have been able to help that lady. What is she going to do? Let her ex-husband get out of paying her the support that he committed to? It doesn't make sense.

Mr. Runciman: In your Chatham experience—you said four or five other colleagues—have there been any problems, any complaints, any lawsuits?

Ms. Casier: Not that I'm aware of. As I said, there are certain people, but overall, they do their job well. You just have to—I don't know. I'm not going to name names or do whatever. But no, overall, from the public's perspective, I think they all think that paralegals do their job well when they find out what we do, because it's still one of those jobs that people don't really know a whole lot about. I describe what I do, and "Oh, I didn't know you could do that. Okay. I'll be in to see you."

Mr. Runciman: Are you called a paralegal?

Ms. Casier: Mm-hmm.

Mr. Runciman: And part of this legislation, of course—the concern is that we're not using that term. Do you see any advantage or disadvantage—if this legislation passes, and it seems the government is intent on passing it, we'll be forbidden from describing you and your colleagues as paralegals.

Ms. Casier: A paralegal is anybody who can do anything for themselves or that you can do—I don't know. I guess it doesn't matter what you call yourself. To me, as a paralegal—we're not saying we're lawyers. I don't know what other name you would attach to us, because we certainly can't say that we're lawyers in the law society. What are we going to be in the law society? I just don't see that this legislation should be passed.

The Vice-Chair: Thank you very much, Ms. Casier. Have a great afternoon. We certainly appreciate your allowing us to call you early to help expedite the public hearings of this committee.

Ms. Casier: Thank you for hearing me.

The Vice-Chair: Our next deputation hasn't arrived yet, so I'm going to have a recess until 4:15.

The committee recessed from 1550 to 1602.

ADVOCATES' SOCIETY

The Vice-Chair: I'm going to call the standing committee back to order. At this point, I would like to welcome Michael Barrack, who is with the Advocates' Society. You have 30 minutes for your presentation. If you do not use up the entire 30 minutes, there's opportunity for members of the committee to ask you questions or make comments about your presentation. For the record, if you would introduce yourself and then proceed.

Mr. Michael Barrack: Thanks. My name is Michael Barrack. I'm president of the Advocates' Society. As you probably know, the Advocates' Society represents over 3,000 lawyers across the province whose practice is primarily appearing before courts and tribunals.

The board of directors of the society represents advocates from each of the regions around the province, and we're made up of lawyers who practise both civil and criminal litigation, both on the plaintiff side and the defence side, crown and defence. So we represent the full range of lawyers. Unlike some of the other groups that have been before you that have a more sectional or sectoral interest, we have a broad range, and all of those groups have to come together to support our submissions.

So in our submissions today, I'll be speaking to the Advocates' Society's strong support for three aspects of the bill that's before you: the amendments to the Justices of the Peace Act and Public Authorities Protection Act in schedule B; the amendments to the Law Society Act dealing with paralegal representation in schedule C; and the amendments to the Limitations Act in schedule D.

While the society supports the amendments to the Provincial Offences Act in schedule E and the Legislation Act in schedule F, both of which are very useful amendments and of benefit to the profession, I won't be addressing those specifically in my remarks.

Finally, with respect to schedule A, which is the amendments to the Courts of Justice Act dealing with structured settlements, the society takes no position on those amendments.

Just by way of overview, the Advocates' Society supports these amendments to the law because we believe that the men and women of Ontario who rely on our justice system will be better served if these changes are made. These changes will move the markers by ensuring that those who adjudicate matters are consistently well qualified and that those who provide legal services are both qualified and regulated.

If I can address, very briefly, the amendments to the Justices of the Peace Act and the Public Authorities Protection Act in schedule B, the Advocates' Society—and again, we're a mix of lawyers across the board—strongly supports the reforms to the justice of the peace system. The more open and transparent system of appointments that is proposed continues the tradition in Ontario of having one of the most progressive systems of appointing judicial officers. It is something that we should be proud of in Ontario. It differentiates our Ontario Court of Justice from the federal scheme, and it

works well. By vetting the appointments through the advisory committee and restricting the appointments to the recommended and highly recommended candidates, the system will become more open and transparent, and this process will help to remove a perception that is out there of political influence as a significant determinant in the appointments process.

The addition of minimum qualification standards ensures that the men and women who become justices of the peace will instill confidence in those who come before them. It's a common saying amongst advocates, and we're reminded by judges, that the most important person in any hearing room is the person who loses the case. The test of a justice system is whether the person who walks out of a hearing room or a courtroom having lost the case believes that they've been fairly dealt with. Only in a system where that belief is almost universal is there a respect for the rule of law. These changes, while they don't reform everything in the rule of law, go some distance to meeting that challenge.

Another aspect of the bill which assists in ensuring that citizens remain confident in our system of justice is the introduction of a more accountable and responsive discipline process. In this bill, by restructuring and expanding the role of the Justices of the Peace Review Council, there will be a system in place to allow people who believe that they have not been fairly treated to address that concern. By adopting a scheme of review that is similar to that for the judges of the Ontario Court of Justice, Ontario remains at the forefront of addressing complaints against the judiciary.

The strength of a proposal like that which deals with the Ontario justices lies in the ability to balance fairness to both the complainant and the justice against whom the complaint is made. One of the major flexibilities of the bill is the ability to have flexible remedies available to the review council, and these range from warning the justice to a recommendation of removal from office. I would compare and contrast that with when we deal with federally appointed Superior Court judges and someone makes a complaint. The only remedy that you have in those circumstances is removal from office, and there aren't these intermediate levels. That, over time, can build up real resentment if there is not an outlet for complaints. This flexibility allows for legitimate concerns to be addressed in an appropriate manner while preserving fairness to everyone involved.

If I could turn briefly to the amendments to the Law Society Act dealing with paralegal representation in schedule C, the members of the Advocates' Society also very strongly support the proposed amendments to the Law Society Act dealing with paralegal regulation. The Advocates' Society has been among the strongest supporters of this type of legislation for a very long time through many iterations and examinations of this question. Our members have seen up close and personal the dangers of not having this provision of legal services by paralegals regulated. I know when Gavin MacKenzie was here as treasurer of the law society, he recounted an

incident where a woman lost a hand, she entered into a settlement for a very low amount and it had to be unwound. It was one of our board members on the Advocates' Society recently who represented that woman as a lawyer and had to go through the steps of getting that settlement unwound. If you were to bring him to the room today, he would speak passionately, and has spoken passionately on numerous occasions, about the need for regulation in this area.

Again, the men and women of Ontario who pay for legal services should have the confidence of knowing that the person providing those services is both properly trained and subject to appropriate regulation. The Advocates' Society supports the proposal that the law society be the body that both licenses and disciplines paralegals. The Advocates' Society is of the view that was expressed by the law society, that the additional duties of regulating paralegals in the public interest can be done most efficiently, most effectively and most economically by the law society rather than by creating a whole new regulatory body. This is new territory for Ontario and it's new territory for Canada. It's important that the body that takes on this task of regulating paralegals and administering the new regulation have not only an understanding but a nuanced understanding of the entire landscape of the provision of legal services.

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The committee has heard representations from various bodies pointing out that the exact boundaries of legal services to be covered by the new regulation will require careful consideration. The proposal in the Advocates' Society's submission in the amendments to create the legal services provision committee as a committee of the law society is a sound proposal for dealing with this issue. The 13 people who will make up this committee will represent paralegals, lawyers and laypersons. In our submission, this strikes a balance that will ensure that the appropriate points of view are taken into account as the structure goes forward.

Ultimately, the point of view that is most important is the point of view of consumer protection. Licensing of paralegals is the cornerstone of consumer protection in this area. The licensing requirements in this legislation ensure that on a go-forward basis the paralegals are appropriately trained and that their practice is limited to their area of training. The law is becoming more complex all the time, and consumers of legal services are best served if they have confidence that the persons providing those services are working in an area in which they are competent. The requirement of a college diploma on a go-forward basis ensures that paralegals will have the skills necessary to represent their clients. That level of training, as opposed to the full complement of training that's required of a lawyer, will ensure that legal services which don't require the full services and training of a lawyer are more readily available to the people of Ontario.

The requirement of licensing, in our submission, reduces the threat of consumers being taken advantage

of. In many instances, when consumers have required legal services, whether they're from a lawyer or whether they're from a paralegal, they are in a place of vulnerability, and they should not be left to an unlicensed group who are not subject to any form of professional regulation or oversight. These amendments will ensure that when consumers are concerned about professional misconduct on the part of those providing legal services, they will have access to a full system of professional discipline. If a complaint is made, it will be investigated and ultimately it may result in a hearing with appropriate sanctions if impropriety or misconduct is established. Members of the public will have the same rights in respect to paralegals that they now have against lawyers.

The benefit of this type of regulation is not only the obvious one of having the ability to deal with the bad apples, but it also acts as a deterrent against potentially bad apples going bad. But a fully regulated profession also has positive benefits. It allows for the majority of competent paralegals to also have the professional support of the law society. As lawyers, we know we benefit from a great range of services that the law society provides to us, including continuing education and the ability to seek personal advice, both on professional issues and on personal issues when the need arises. To extend these benefits as well as the regulatory framework to paralegals will enhance the quality of services that the paralegal profession is able to provide.

There's no doubt about it that this is innovative legislation. It does acknowledge the reality that a profession exists that is providing services to consumers in Ontario, and it has existed for some time. But for the first time, it provides the public with the safeguards it has with respect to other regulated professions. The fact that this is new territory, in our submission, is appropriately reflected in the provisions of the bill, which calls for two separate reports: The first is by the law society's legal services provision, and the second is by a non-lawyer, non-paralegal person appointed by the Attorney General.

As this committee is well aware from the submissions that it has heard over time, the entire area of regulation of paralegals has been talked about for a very long time. It is the very strong submission of the Advocates' Society that there has been sufficient debate on this issue and that the need for regulation is real. The time for legislative action in this area, in our submission, is long past due.

Finally, I'd like to speak very briefly to the amendments to the Limitations Act in schedule D. The Attorney General, when he comes and talks to us as lawyers, is very quick to point out that the legal profession should have picked up the gap in the recent changes to the limitations legislation prior to the introduction of the current Limitations Act. He's right; we didn't pick it up, and we should have made submissions at that point in time.

The inability of parties to agree to extend the limitation period beyond what is provided for in the Limitations Act is a clear oversight. Parties should be free to agree that they will continue to attempt to resolve their

issues without being forced to resort to court proceedings if they mutually agree to do so and if they agree to do so without giving up their legal rights. Similarly, if businesses, in structuring transactions, are free to set longer or shorter periods between themselves, then we've avoided the potential for an obstacle to doing transactions in Ontario. The Advocates' Society supports these changes and, as I've said, supports the other changes in the last two schedules of the amendment.

On behalf of the Advocates' Society, we believe that this is important legislation, particularly in the areas that I've addressed. We strongly support those areas that I've spoken to and thank you for the opportunity to address you and put our views on the record. I know it's repetitive of much of what you've heard, but they are our views.

The Vice-Chair: Thank you very much, Mr. Barrack. We have 17 minutes for questions and comments, starting with the government. Mr. McMeekin.

Mr. McMeekin: A very cogent, clear, focused presentation; helpful. Thank you very much.

The Vice-Chair: Mr. Runciman.

Mr. Runciman: Thank you, sir. I appreciated very much your last comments with respect to the Limitations Act. As you suggest, I'm not surprised by the Advocates' Society's support for schedule C and the law society's regulation. Virtually everyone who is a lawyer who has appeared before us has taken the same position, with much the same rationale, and virtually every paralegal who has appeared has had a different view of the world. At some point, we're going to have to struggle through that.

As I was just on my way in, you talked about the justices of the peace appointments process. Just a couple of questions about that: Going back to 1990, in that era, the NDP government did away with part-time JPs and went towards a full-time semi-legally-trained level of court, I guess—at least, it sometimes thinks of itself as a court. I am a supporter of having a cadre of part-time JPs who can provide services that sometimes, today—I think it has been addressed to some degree, but not completely, if you talk to police officers, about trying to get, for example, a JP for a bail hearing at 2 or 3 o'clock on a Sunday morning, or something of that nature. Getting someone who's on salary to work beyond the defined hours of work has been something of a challenge, and that's certainly a complaint heard from the police community. I would like to hear your views on having a corps, if you will, of part-timers to supplement the full-time JP numbers.

Mr. Barrack: Mr. Runciman, let me say to start with that while I used to practise criminal law in my younger days, I don't practise it so much anymore, so I don't have the on-the-ground experience to know what does or doesn't go on. But when I did speak to some of our members before, the real challenge here, from the Advocates' Society perspective, is that the justices of the peace are fulfilling very important roles within the justice system. Whether or not to grant someone bail may be

someone's first encounter with the legal system. To deal with the Provincial Offences Act matters that the justices of the peace have to deal with—while it's easy to minimize them, for the people affected by them, they are significant events. They're not all just parking tickets; these are significant events in people's lives.

Where the Advocates' Society comes from is when you're going to have that kind of impact on people, really the level of qualification and the professionalism of the body that's dealing with it is what we're aimed at. If there aren't enough of them so that police officers can get them over the weekend, that's a problem, but it's not necessarily one that falls within the scope of the legislation. We appreciate that it's an administrative concern. But whether it's the middle of the night on the weekend or whether it's Monday morning in a court, when that person comes before a justice of the peace to have their rights adjudicated or if they're someone who has been charged with an environmental offence or another offence of that kind, it's our very strong submission that they have the right to the most qualified person that we can put in front of them to deal with the issue.

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Mr. Runciman: I'll ask for your opinion. I have a few more minutes.

This is an amendment I may propose to one section of the act dealing with the administration of justice. Having an annual report with respect to the operations within the justice system that would require the inclusion of things like the number of crimes committed while on bail, probation, conditional release, subject to or eligible for a criminal deportation order, or the number of remands per case—and that would be by court location and/or the justice categorized by the Criminal Code or the POA—those kinds of stats which I think would be helpful for a public understanding of what's happening and where it's happening, and perhaps put the focus on some of the decisions being made and the individuals making those decisions: What's your reaction to that kind of initiative?

Mr. Barrack: Let me break it down. Measuring what we do within the justice system in and of itself is not necessarily a bad thing. We all try and do it in various ways. We do owe some element of measurement to the public.

The last bit of your comment—and what the Advocates' Society is very clear about—is that statistics and measurements should not interfere with judicial independence, and that we should not be measuring our judges from the point of view of saying, "Who are our good judges and who are our bad judges? Who are our good justices of the peace and our bad justices of the peace?" by reason of the outcomes in their courts. That's a very dangerous thing, and it starts down a road of political interference in the judicial process that we're against.

Simply measuring the level of activity for the purposes of resource allocation for the determination of where we need resources, of where people are being served and not

being served, is a good thing as long as those statistics are accurate. We all spend a lot of time cross-examining people in courts about their statistics and know that there are good ones and there are bad ones; they can be used for a lot of purposes. The simple concept of measuring activity within the justice system is not something we're opposed to.

Mr. Runciman: Another quick question. We don't get the Law Society Act opened up too often. I did raise this and had the wrath of the criminal bar come down on me, but there was obviously the Bernardo case. I think it was Mr. Ken Howard—was that the defence lawyer? I may have the wrong name. But that situation where obstruction of justice charges—

The Vice-Chair: Mr. Runciman, could you move just a bit closer?

Mr. Runciman: —obstruction of justice charges were laid, and there was also a review by the law society in terms of being aware of evidence that could have kept Karla Homolka in prison to this day, as an example.

There was also another case where a body had been moved and the individual representing the person charged was aware of that body being moved but didn't reveal that evidence. I just wonder if you feel that the defence counsel should be under an obligation to make that kind of evidence available to the proper authorities.

Mr. Barrack: The whole area of solicitor and client privilege is something we are staunch defenders of. The most recent pronouncements of the Supreme Court of Canada came out in the Blank case last week. The Advocates' Society was one of the interveners that was referred to in that case. We believe firmly in the preservation of solicitor and client privilege. We also know that it is not absolute and there are circumstances where lawyers have other obligations, but we don't feel that that's an area in need of any law reform at the present time.

Mr. Runciman: Have I any more time?

The Vice-Chair: One minute.

Mr. Runciman: One minute? Okay. We'll keep going. We talked about the JP appointments process, and we could also talk about the Ontario Courts Management Advisory Committee, but I'd like to see the justice committee and the legislators play more of an active role here rather than having the AG make appointments to these committees. Why should not the justice committee of the Legislature play that role so that we have an opportunity to review some of the appointments with respect to these councils? We had the Supreme Court appointee at the federal level who went through a parliamentary review, and I'm just wondering what your feeling is or what the Advocates' Society's view might be of that kind of process perhaps being adopted at the provincial level.

Mr. Barrack: Well, there's a whole lot wrapped up in your question. The parliamentary review of Justice Rothstein's appointment was not an appointment by a legislative committee; we all know that. Again, we believe it's very important that we support the current system. Your question goes beyond the justices of the

peace. In Ontario, we believe that we have probably the best system of appointment of justices the way it works now, with the committee making recommendations that the Attorney General has to choose from, and we don't see any need to change it. We think it's working well, and we have a lot of respect for the rule of law in this province. Our judges are seen to—

Mr. Runciman: Even in Caledonia?

Mr. Barrack: Not everywhere, but as somebody who has spent a lot of time in courtrooms, when the person walks out of the courtroom upset at a judge, the reason they're upset at the judge is because they believe that that judge has real authority to affect their lives. That is, in its own way, respect for the rule of law. As somebody who has practised in Ecuador, I tell you, we've got to work hard to preserve that.

Mr. Runciman: Agreed.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, sir, for coming today. The Limitations Act amendments, schedule D, were intriguing to so many of us. They were slipped in there. We learned about tolling agreements, which Ms. Drent did some work on at my request. It appears to be a very American term.

Mr. Barrack: The term is an American term. I didn't know what it was the first time an American lawyer said it to me.

Mr. Kormos: But I was the only one at committee who confessed to not knowing what it meant. They all sat here, pretending they knew exactly what they meant, but—

Mr. Barrack: Listen, I can remember the first time I was in a meeting and an American lawyer started talking about a tolling agreement. I had the same reaction. I had been practising for a number of years, and I didn't know what it was, but I figured it out.

Mr. Kormos: Okay. The Advocates' Society is supporting permitting tolling agreements between parties.

Mr. Barrack: Yes.

Mr. Kormos: All right. You can imagine that we've heard contra views. I presume part of it is self-interest, entrepreneurs who want the protection of a statute setting a maximum. But someone suggested that it's in the interest of the courts that there be a prohibition on tolling agreements, because we shouldn't expect our publicly funded courts to be burdened with litigation that may address something that's 50 years old when the motive for entering into that tolling agreement was perhaps to be competitive and to simply outbid a competitor. What do you say to that?

Mr. Barrack: I'd turn it around the other way. I think if we don't have the tolling agreements, then we're going to get kickback from the courts that they're being overburdened with cases that shouldn't be there because people were forced to start their lawsuits when they were still negotiating. On every side of this coin you can point out that there will be an example of a case that will cause harm, where the profession is prepared to throw its hands up in the air and say, "Look, we missed this," because

what we didn't appreciate was where we have parties in good faith who want to extend the limitation period. I practise a lot in the commercial area, the commercial list. If I were to go up and the judge says, "What are you doing here?" and I say, "Well, we have to start it because it's under the Limitations Act. We have to start the case, but our clients are still talking, so we want you to just go through the expense of filing these papers, putting your court staff to the expense and doing all of this, because we have to," we all scratch our heads and say, "Well, that doesn't make a lot of sense."

So you're right. There are going to be circumstances where the court is going to say, "What are you doing here?" But, as you know—you're a lawyer—there are concepts within the law that can deal with that as well.

Mr. Kormos: Let's be very clear, because there appear to be two types of tolling agreements: one which is entered into after a purported cause of action arises, and one which is the subject matter of the initial agreement or contract. In other words, you put out a tender and one of your requirements is that the party tendering agrees to extend the limitation period.

1630

Mr. Barrack: Right.

Mr. Kormos: So are you advocating equally for both types? You seem to be speaking to the first type, which is understandable.

Mr. Barrack: No. I advocate for both of them, and the reason is this: In the reality of the marketplace that you describe, there's going to be somebody who's going to want to have the ability to sue, and there's somebody who's going to want to have the ability not to be sued. Experience has taught me that nobody is going to do the deal at a 50-year level. They're going to come to some commercially reasonable saw off between them against those two tensions that's going to be something that the courts in 999,000—one in 10,000 or one in 100,000 may be something that's offensive, but you know the flexibility of the common law. If somebody has a 50-year period and thinks they're going to be able to assert a cause of action after 50 years, I hope I've got the other side of the case.

Mr. Kormos: Several participants in the hearings have commented on rumours that the limit of the jurisdiction of the Small Claims Court is going to be increased to, some suggested, \$20,000; some suggested \$25,000. Do you have a view on that?

Mr. Barrack: We do have views. As you know, the Attorney General has appointed Justice Coulter Osborne to look at the whole area of civil justice, and, as you probably know, the Advocates' Society convened a streamlining civil justice conference, which we convened last year. One of the strong areas that we looked at, and we're urging Mr. Osborne to look at, is this whole area of the summary disposition of matters, which—there are a number of jurisdictions we can learn lessons from.

In BC, they've done some creative things that we talked about at our conference. It's an area that we think is not within the scope of this bill, but we think this

whole question of what we call proportionality, trying to find a framework for the resolution of disputes that is proportional to the size of the dispute, is something that is incumbent upon us as a profession to address. Whether it's a specific increase in the amount in the Small Claims Court or devising more flexible mechanisms within the other courts, I'll leave that open till we hear from Justice Osborne.

Mr. Kormos: It's interesting, because the former Attorney General, Mr. Flaherty, often spoke about our judicial system as being process-obsessed. Is that a fair comment? Is that observation in and of itself a fair one?

Mr. Barrack: I don't know whether it's our judicial system or whether it's some of our lawyers who are process-obsessed. I don't know that you've got to fix the rules. Sometimes, maybe the fault lies not in the stars but on this side of the table in ourselves. Maybe we've got to chin up. Good lawyers are not process-obsessed. There are some out there who are process-obsessed, and we at the Advocates' Society, through our education processes, try to shake the process obsession out of them.

If you want to get a dispute resolved quickly within the rules we have now, you can do it. If you want to do it efficiently, you can do it. Are there changes that would help that be more universal? Sure, there are, but that's really for another day, and not the scope of these

amendments. But we sure may be back to you on some of those when Mr. Osborne is finished his work.

Mr. Kormos: That's interesting. Perhaps, Chair, just one further question.

The Vice-Chair: Very quickly, Mr. Kormos.

Mr. Kormos: Yes, ma'am. We had a deputy Small Claims Court judge in here. I've got a lot of admiration for them, because as you know, they've got to deal with everything from soup to nuts. They don't have a whole lot of resources. They've got to make fast judgments most of the time.

Mr. Barrack: And some days, there are more nuts than soup.

Mr. Kormos: Fair enough. Well put. It's really demanding. Should the province get back into the business of appointing Small Claims Court judges?

Mr. Barrack: I don't know the answer to that question. I haven't thought it through.

Mr. Kormos: Okay. Thank you kindly.

The Vice-Chair: Thank you very much, Mr. Barrack. The time has expired, but I certainly appreciate your accommodating the committee and arriving early so that we could get through our deputations for the day.

That brings to an end the public hearings of this committee for the day. The committee is now adjourned.

The committee adjourned at 1635.

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Comité permanent de la justice

Loi de 2006 sur l'accès à la justice

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 13 September 2006

Mercredi 13 septembre 2006

The committee met at 0907 in room 151.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006

SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Vice-Chair (Mrs. Maria Van Bommel): Good morning, everyone. I'm going to call the public hearings of the standing committee on justice policy to order. We are hearing Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

FIRST CANADIAN TITLE

The Vice-Chair: Our first presenters are First Canadian Title. You have 30 minutes to make your presentation. If you don't use the entire 30 minutes, then there's opportunity for members of the standing committee to ask you questions or make comment on your presentation. Before you start, if you would introduce yourselves for Hansard. Thank you very much, and welcome.

Ms. Wendy Rinella: Good morning. Thank you for the opportunity to appear. My name is Wendy Rinella, and I'm with First Canadian Title. Joining me today is Professor Paul Paton from the faculty of law at Queen's University in Kingston. Professor Paton's specialty is ethics and professional responsibility.

Before I provide a proper introduction to Professor Paton and why I've invited him here today, I'd like first to provide you with some background about our company and our competitors.

First Canadian Title is Canada's leading provider of title insurance for residential and commercial transactions, real estate transactions and other related products and services. Established in 1991, we pioneered the concept of title insurance in Canada. Title insurance is a form of consumer protection to protect the insured from risks to their property title. Fifteen years later, we've helped protect millions of Canadian owners and lenders

from unforeseen circumstances affecting their title to real and personal property.

Currently, First Canadian Title employs over 1,000 people across Canada. In Ontario, about 625 people are employed at our home office in Oakville and at affiliated companies in Hamilton, Mississauga and London. Currently, First Canadian Title's home office is undergoing an expansion that will house an additional 150 employees.

We'd like to begin by saying that we support the need for paralegal regulation. While we recognize and support the importance of paralegal regulation, we have grave concerns about the breadth of power provided to the Law Society of Upper Canada through Bill 14. For reasons we outline in our submission, which I believe has been distributed to you and about which I'll be speaking to you today, we consider the law society to be our commercial competitor. There are five other title insurance companies that actively compete in the Ontario marketplace. You'll hear from Steven Offer of Chicago Title, another of our competitors, later this morning.

We recognize that it may seem unusual for us to refer to the regulator, the law society, as a competitor, but they are. The Law Society of Upper Canada's wholly owned subsidiary, the Lawyers' Professional Indemnity Co., doing business as LawPro, which I will refer to as LawPro, provides professional errors and omissions, or E&O, insurance to lawyers practising in the province of Ontario. LawPro has a monopoly on the provision of E&O insurance to lawyers in Ontario and under Bill 14 will have a monopoly on E&O insurance for all licensees of the law society. In addition to professional indemnity insurance, in 1996 LawPro began selling title insurance under the product name TitlePLUS. TitlePLUS is now sold in eight other provinces in Canada, so we have been competing against the law society for a decade across Canada.

Since the introduction of Bill 14, we've been concerned about the reach of the law society and its ability to regulate our activities, especially as we consider the law society to be our commercial competitor. We have been advised by our legal counsel, Earl Cherniak, Queen's Counsel, that our business-to-business transactions are caught by the new definition of legal services in Bill 14. A copy of Mr. Cherniak's opinion is included in our written submission in appendix E.

The bill provides the law society with broader powers to regulate, including the power to seek injunctions

without a prior conviction or charge, which is section 26; to conduct investigations on the basis of suggestions, section 49; and the power to choose whom to exempt from the bill's regulatory scheme, under section 10, through their bylaw-making authority. As such, we have been requesting that an exemption from law society regulation be specifically included in the legislation, especially as we believe it's unfair and inappropriate for us to have to seek permission to continue our business operations from our competitor, the law society.

The Attorney General advised us that there is no intent to capture our activities, and that based on his office's interpretation, we were not caught in the legislation. While this may be comforting, it's not the legislative assurance we sought, and we believe it's important to ensure that there is no room for argument that the law society might regulate our activities. So we requested the support of the law society that an exemption for our operations and products be included in Bill 14, because of the inherent unfairness of being asked to seek an exemption in provincial law from a competitor.

The law society responded that they have no intent to regulate us. I think they made similar comments to others. Furthermore, the CEO of the law society advised us that "LawPro's affairs and that of its title insurance subsidiary are managed by a separate board of directors charged with running the affairs of the insurance company," and that "the law society will not jeopardize its 200-plus years of self-governance through the misapplication of its authority." In his view, there is no conflict between the law society's regulatory activities and its commercial activities as a provider of title insurance in the Ontario marketplace. These letters are in appendix C.

We take issue with this view, particularly when the law society's CEO as well as five of the governors, or benchers, of the law society sit on the board of LawPro. In light of this response from the law society, we asked Professor Paton to review Bill 14 and to examine the relationship between the law society and its title insurance business. We also asked him to review law society reforms being pursued in the United Kingdom. Professor Paton is a noted scholar on professional ethics and corporate governance and has counselled numerous organizations, including the Institute of Chartered Accountants of Ontario and the law society. His opinion is also included in the written submission in appendix D.

I now ask you to provide the highlights of that, Paul.

Mr. Paul Paton: Thank you very much, Madam Chair, for having me here this morning. I appreciate the opportunity to speak to the members of the committee.

As Wendy has noted, First Canadian Title asked me to review Bill 14 and in particular to examine the relationship between the Law Society of Upper Canada and its activities as a commercial provider of title insurance in the Ontario marketplace. First Canadian provided me with a copy of the legal opinion they obtained from Earl Cherniak, which Wendy has referred to, and his conclusion that First Canadian's activities are caught by the expanded definition of legal services.

As I note in my report, which is part of the submission that Wendy has provided you, and as I'll mention later here, I take no position on that issue. I acknowledge that there's a conflict between the position of the law society and the position of Mr. Cherniak on that issue. What I do in the report, though, is refer to that opinion and that conflict as important background for the discussion of the regulatory reach and the commercial activities of the law society.

As Wendy has noted, I am a professor at the faculty of law at Queen's University, where my teaching and research focus on legal ethics and professional responsibility, the regulation of lawyers and accountants, and issues of corporate governance in the legal profession. I have worked with different organizations, including the Law Society of Upper Canada. In that context as well, I want to make it abundantly clear that my comments this morning and in the opinion relate to the structural issues of conflict that I perceive as potentially arising based on Mr. Cherniak's opinion. It's in no way, shape or form any commentary on the activities of any of the individual benchers or the CEO of the law society exercising their authority.

There are essentially two parts to the opinion that's included in the materials. One part reviews the commercial activities of the law society in its activities as the owner of a wholly owned subsidiary engaged in the business of title insurance, and the other part provides a brief look at current developments in England.

I make two general conclusions: First, in England, government has actually taken a very different direction than what is being proposed in this bill. Rather than actually delegating greater authority to the law society or the Bar Council in England to regulate the conduct of those engaged in providing legal services, a draft legal services bill introduced in the UK Parliament on May 24 of this year in fact brings the regulation of legal services closer to government. It also removes existing restrictions on the business structures through which legal services could be provided. That's a very different direction than what is being proposed here.

Second, and more importantly for the purposes of the narrower issue Wendy has identified about the commercial activities of the law society, I concluded in the opinion that if indeed Mr. Cherniak is correct and the business-to-business activities of First Canadian Title are captured by the legislation's grant of authority to the law society to regulate legal services providers, the legislation would in my view place the law society in the position of having the discretion and authority to regulate the conduct in that case of a title insurance provider with which its wholly owned subsidiary is competing in the marketplace.

The matter, as Wendy has noted, is further complicated by the fact that the law society's own benchers and CEO sit on the board of LawPro, thus putting them in the position on the one hand of making decisions on the regulation of legal services providers with whom the wholly owned subsidiary is competing while at the same

time exercising fiduciary duties as directors of LawPro. As a result, there is a very real prospect that other providers will at least question whether there is any bias in the exercise of the law society's regulatory function because of the structural conflict that might end up resulting, even where the individual benchers, directors and the CEO are diligent, careful and prudent in fulfilling their duties.

I want to go on briefly to discuss a couple of extra dimensions that I note in the report. As I've noted, the law society disagrees with the position of Earl Cherniak, and the Attorney General has indicated that it was never his intention to have First Canadian's activities included, particularly as they are regulated already by the Financial Services Commission of Ontario.

That, for me, is actually the critical issue and one from which the balance of my opinion flows, but as I've noted, that's an opinion that was the result of Mr. Cherniak's work. If it were clear that the law society did not have the power to regulate these business-to-business activities, then the rest of that issue would actually be moot: They wouldn't be engaged in regulating their commercial competitor. But there is still the question that I pose in the report of why a regulator is engaging in activities in the commercial marketplace through a wholly owned subsidiary.

In that direction, there is an odd state of affairs, with the body responsible for regulating the legal profession engaged in commercial activities when, in the amendments that are being proposed to the Law Society Act, there is a new section 4.2 which says that the law society, in carrying out its functions, duties and powers "shall have regard" to:

- a "duty to maintain and advance the cause of justice and the rule of law";
- a "duty to act so as to facilitate access to justice for the people of Ontario";
- a "duty to protect the public interest"; and
- a "duty to act in a timely, open and efficient manner."

So why does the law society own an insurance company? The present Law Society Act says in section 5, "The society may own shares of or hold a membership interest in an insurance corporation incorporated for the purpose of providing professional liability insurance to members and to persons qualified to practise law outside Ontario in Canada." That's the present section 5, and there's no proposed amendment to that section.

0920

That certainly is within the prerogative of the Legislature to decide. I can understand that the genesis of that section may be some concern that lawyers would be uninsured or unable to obtain insurance in the commercial marketplace.

As I note in the report, in England they do this very differently. In England, the law society or the regulator responsible sets out minimum insurance requirements for professional liability and then leaves it to the commercial marketplace for members to source. They actually pro-

vide a list on their website of a whole series of private insurance companies from whom members may end up attempting to obtain insurance.

In 1990, under section 5, the law society established LawPro to provide mandatory and optional supplementary professional liability insurance to lawyers. It's that same company that, as Wendy has noted, since 1996 began offering a title insurance product, TitlePLUS.

The distance between the law society and LawPro is also a question for some debate, and Wendy has already mentioned the view of the CEO of the law society. I'd suggest that that issue merits your careful scrutiny.

The CEO of the law society confirmed that LawPro is in the business of title insurance. He asserted that "LawPro's affairs and that of its title insurance subsidiary are managed by a separate board of directors," and he claimed that "the law society's obligations to regulate legal services in the public interest should not and will not be affected by the activities of a separate company."

I agree that the obligations to regulate should not be affected; the problem is whether there's room for perception that they might be. In my view, there's a valid concern about that.

It's clear, for the reasons I set out in the opinion, that the law society has a financial interest in the activities of its wholly owned company, LawPro, though I found it difficult to discern from the reports publicly available precisely what that financial interest is. In the report, I go through in detail what I was able to find from recent reports to convocation from the law society's finance and audit committee. It doesn't make specific reference to income received from the law society's commercial activities in insurance. The auditors do put the errors and omissions insurance fund and Lawyers' Professional Indemnity Co. together as what they call a "related entity" for purposes of the financial statements, and they note that the E and O fund provided the general fund with income derived from its surplus earnings. In 2005, that was \$2.5 million; in 2004, \$3 million.

So there is a close financial connection and a relationship between the board of LawPro and membership in convocation, the body ultimately charged with responsibility for regulating lawyers and now legal services providers. That's worth probing.

Further, even the law society's own rules of professional conduct acknowledge a close relationship between the law society and TitlePLUS. Rule 2.02(13) provides that "If discussing TitlePLUS insurance with the client, a lawyer shall fully disclose the relationship between the legal profession, the society and the Lawyers' Professional Indemnity Co." That's a rule of professional conduct.

There's nothing further in the commentary about the dimensions of that relationship that the lawyer has to disclose, just clear recognition that there's something sufficiently close about the relationship that requires that, as a rule of professional conduct, a lawyer has to talk to his or her clients about it, something they don't have to do in respect of other title insurance products.

It's also worth noting that LawPro's mission statement provides that it's "to be an innovative provider of insurance products and services that enhance the viability and competitive position of the legal profession."

As I see it, Bill 14, if enacted as it has been proposed, presents the possibility that you've got a company that's a wholly owned subsidiary of the regulator of the legal profession with "enhancing the competitive position of the legal profession" as an explicit mandate.

I wouldn't take issue if, for example, the Canadian Bar Association wanted to do that. The CBA is a voluntary organization, a professional association of lawyers, which takes a leading role in advocating on behalf of lawyers but whose work transcends what might be considered partisan interests, and their submissions are often taken into account by legislators and courts as an important contribution to the dialogue about key issues affecting the public interest. But the CBA is not a regulator; the law society is.

In terms of other directions about regulation, there has been a fundamental transformation in the United States post-Enron about the way that Congress actually charged the Securities and Exchange Commission with developing rules to govern lawyers engaged in practice before the commission. There is much more government direction there than ever before.

Similarly, in Australia there has actually been a move to what's labelled co-regulation, bringing the law society closer.

So, in that respect, the general direction of this bill is quite contrary to the developments in other places. I've suggested in the report that there is at least a question arising about the authority being granted to the law society in respect of its wholly owned subsidiary and the potential for a conflict of interest in the exercise of that regulatory function in the commercial marketplace.

Ms. Rinella: In conclusion, we would ask legislators to consider what we believe to be a number of critical questions that must be asked as they are making their decisions on Bill 14:

(1) Is the law society a regulatory body or is it a commercial entity? Regulator or competitor?

(2) Is the province going to delegate a very broad power to an unelected body, despite the recognition by many groups that have appeared before you that the activities of many regulated professions and industries are captured in this expanded authority?

(3) Is the province going to retain control and ensure its legislative intent is realized or is it going to hand all exemption-making power over to an unelected body?

(4) Finally, are legislators going to force title insurers to ask their competitor for an exemption in provincial legislation to continue its business operations?

We are requesting specific amendments in Bill 14 to provide title insurers with stability and certainty, to retain the status quo and to protect 625 jobs at First Canadian Title alone and to remove the conflict of the law society as a regulator engaging in commercial, competitive activities.

In our written submission, we've requested a number of amendments similar to what other organizations have raised. But, as you might note, we have a few other issues. I will be appearing later with Steven to raise a number of these, but I want to focus on a few right now.

The first is the province retaining authority to make exemptions from the broad legal definition in the legislation in the form of a regulation-making authority. I heard the chair of the paralegal task force, William Simpson, say that if it's not given to the law society through their bylaws, then it will be cast in stone. I think that's a false dichotomy. It's not an either-or proposition. You can have exemptions right in the legislation; you can also have the law society being able to make some exemptions themselves; and then you can have an appeal-to-Caesar clause, a regulation power by the province that they can grant exemptions if the members of the public do not receive satisfaction from the law society. So I don't think it's an either-or proposition.

Secondly, we'll ask that the validity and the enforceability of a document that is being insured by a licensed and regulated title insurance company be exempt from the law society, because these are underwriting transactions between two financial institutions and they have no impact on the province.

We'd also ask that Bill 14 be amended to change the wording to ensure more stringent requirements on the law society to seek injunctions and launch investigations. Injunctions should include convictions and charges, not just suspicion and suggestions.

Finally, we'd ask that the legislation include provisions to prevent the law society from engaging in competitive commercial activities. Regulators should not be engaged in or hold interests in commercial activities. This is against the public interest.

I'm not going to read the rest of my comments. I know Ted McMeekin has already speed-read them, so I'm quite comfortable with that. In conclusion, I'd just like to say that the intent of the regulator will always be suspect if it is engaged commercially in a related business interest. Thank you.

The Chair (Mr. Vic Dhillon): We'll begin with the official opposition. Mr. Runciman. Three minutes each.

Mr. Robert W. Runciman (Leeds-Grenville): Thanks, Wendy and Professor, for being here. This is a very interesting and, in some respects, intriguing presentation. Certainly I hadn't been aware that the law society was in a competitive position with a business or industry such as yours, so this is an interesting revelation and I think it will be helpful, hopefully, as we proceed.

I have been talking about, since we began the hearings, having a scope of practice with respect to the regulation of paralegals. It is very clear and doesn't sort of open the door as wide as the wording in the legislation before us does, capturing a whole host of people who have, I think, expressed very legitimate concerns, as you have here today. Hopefully, government members are going to recognize those as legitimate concerns when we get down to the short strokes next week in clause-by-

clause consideration of the legislation and amendments that will be tabled by, I suspect, all three parties.

I'm intrigued by the fact that the law society—and I'm not trying to be anti-law society, and I hope no one is interpreting it as such, but I suggested yesterday to Mr. Simpson that perhaps the approach in this process would have been more one of collaboration in working with the various organizations who have concerns so that we can work in a collaborative way to achieve a piece of legislation that's going to meet, I think, the end wishes of all. We have paralegals appearing here every day saying, "Yes, we support regulation; we think it's in the best interests of the industry."

0930

I think what's happened, in fact, from the law society's perspective—and maybe I'm being unfair and they'll chastise me later—is they have not made the effort to reach out and offer that olive branch and try to find ways to work with everyone who has concerns. Some of the language that's been used in terms of prosecutions and so on has only added fuel to the fire, if you will, in terms of those concerns. So, hopefully, over the next week or so we can find ways to work together to achieve what we all hope is going to be a good piece of legislation and meet the goals of all of us, including those in the paralegal industry.

So, once again, thank you. I think this is going to be most helpful as we go forward.

The Chair: Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you, both of you. This is disturbing stuff, and let me tell you why: because nobody else has told us about it. First, Ms. Drent has been incredibly competent and efficient at producing research material to prepare for us a profile of LawPro. It's amazing, in view of the length of time it has taken this government, never mind previous governments, to put forward this legislation—and this isn't even minutiae—that these things wouldn't be contemplated, considered and addressed in the context of how the legislation is written.

Everybody knows what it is that everybody is trying to do, and that's to regulate paralegals so that the public can be protected against incompetent, unscrupulous paralegals, and to the extent that that can happen, one is still skeptical, because I'm not sure that the law society has been totally effective in protecting people against incompetent, unscrupulous, avaricious lawyers. But that's the nature of the beast. One of the fundamental problems is that if the legislation is designed to regulate paralegals, it doesn't even start at the starting point; it doesn't say that. It doesn't define what a paralegal is and say that this is the community of people this legislation will, one way or another, regulate. That's why you're drawn into it: because it fails.

I can't think of a rational person who ever would have thought that the discussion around regulating paralegals meant regulating people in banks who are loan officers; mediators who help parties to a mediation draft minutes of settlement; real estate agents who prepare real estate offers of purchase. What in the world is going on?

I remember tugging on Michael Bryant's coattails on a daily basis in the spring of last year, saying, "For Pete's sake, Bryant, introduce the bill so perhaps we can consider it during the summer." Not the summer of this year; the summer of last year. And all the moaning and groaning and crying and complaining and pulling of hair and gnashing of teeth and, oh, this was so imminent, and the pressure was on—no bill.

The Chair: Thank you very much, Mr. Kormos.

Mr. Kormos: Thank you very much. The government has got some answering to do here. A serious problem has been raised.

The Chair: The government side—Ms. Van Bommel.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you for bringing this to our attention as well. I guess the question really is, how did the law society get into the business of title insurance and even insurance in general? Was there at one point a gap in the market, a lack of providers? Is there a professional reason for having done that? Do you know why the law society would be doing this?

Ms. Rinella: My understanding of the history is that First Canadian Title was the first provider of title insurance in the marketplace in a substantive way. In 1995, they entered into a relationship with lawyers who were providing mortgage refinances to Canada Trust and they decided to do a pilot project in Hamilton. As a result, they were title-insuring mortgage refinance transactions with Canada Trust. Instead of getting a survey and a lawyer's opinion that cost \$850, it would cost the individual—the borrower—\$350. At the same time, instead of taking three weeks, it took them three days. So we had phenomenal growth throughout the 1990s. As a result of that, a number of lawyers who were involved in real estate looked at the incursion of title insurance as a competitive issue. Although I'm so young that I wasn't around for it, I'm told that in 1995 there was a slate of benchers who were elected on the specific issue of dealing with title insurance. They set up a committee and the committee reported to convocation, and one of the recommendations they made—and maybe Mr. Kormos can verify this, as a lawyer—was that—

Mr. Kormos: And very much having been around in 1995.

Ms. Rinella: —the errors and omissions provider should also provide TitlePLUS as a competitive answer to the title insurance that First American Title—at the time that was our name—was offering to Canadians. So it was a competitive move by the law society. That's my understanding of the history. I can certainly present documents. I think Paul was showing me that some of the election mandates the benchers were running on at that time were to assist real estate lawyers and address competitive issues with title insurance companies.

The Chair: Mr. McMeekin.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Thank you very much for your presentation. It's been said that politicians campaign in poetry and govern in prose, to which I would add that

good government is narrowing the gap between the two. When you put something down on paper, that's certainly prose. I'm struck with a couple of things, and I want to make it clear in terms of both the poetry and the prose that I'm not here to enhance the competitive position of lawyers. Let me make that clear. I don't think anybody here is. That having been said, I'm struck by the reference to the opinion by Cherniak, the thrust that, while regulation is needed, it can't be too inclusive—the reference from the law society to a number of groups being excluded and some difference of opinion there. I love the reference in terms of poetry—the appeal to Caesar. I think the AG will like that. That's a good kind of phrase. Since it has never been his intention, and there's a consensus that we need to regulate, I think your suggestion about retaining the right to further exempt—presumably Caesar's right to further exempt—is brilliant. I really like it. I think it makes sense. In those areas where there is some lingering doubt or disagreement, the government can then intervene. So I want to thank you for that and for the insights you've brought. This is not cast in stone. It's not even wet cement yet, so we'll work on it.

The Chair: Thank you for your presentation.

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ONTARIO BAR ASSOCIATION

The Chair: The next group is the Ontario Bar Association.

Mr. Runciman: On a point of order, Mr. Chair: I gather we have a gap in our schedule later in today. We had a request from a recent graduate of Osgoode Hall who would like an opportunity for a 10-minute appearance, a brief appearance, to outline some of his views with respect to the legislation. I think we have agreement amongst all three parties, if we can contact him, to give him that opportunity.

The Chair: All agreed? That's fine. Thank you.

Good morning. You have 30 minutes and you may begin any time.

Mr. James Morton: We do have a full 30 minutes, Chair?

The Chair: Yes.

Mr. Morton: Great. My name is James Morton, and I am the president of the Ontario Bar Association. You do have our written submissions. With us, to my immediate right, from our paralegal task force, is Virginia MacLean, Queen's Counsel, and just to her right is Steven Rosenhek, also from the paralegal task force. They are going to be speaking to schedule C from our submissions on paralegals. To my left is Wayne Gray, and Mr. Gray is going to be answering questions only with regard to the limitations issues in schedule D.

At the outset, I want to thank the committee for hearing us today. We are here today to try to put to you the position of lawyers in the province. I want first briefly to highlight our position on two areas which are perhaps less contentious than paralegals: the issues arising with regard to justices of the peace in schedule B

and the amendments to the Provincial Offences Act in schedule E.

Very briefly, with regard to justices of the peace, they are an extremely important part of our justice system. They are the people who, for the main part, determine whether bail is granted, and as you can see in our submission, that is a critical element in the justice system. Proper and full qualification of justices of the peace, in our submission, is essential.

With regard to schedule E, the amendments to the Provincial Offences Act, we agree that technology must be kept current. We have to ensure that justice is done substantively and decisions are not based upon technicalities and difficulties of having police officers and the like attend at provincial offence matters. But it is essential that the right of cross-examination be maintained through whatever technology is used. Cross-examination is the most powerful engine of truth that the justice system has discovered, and it needs to be protected.

Just before turning to Ms. MacLean to continue, I wanted to make one comment as Ontario Bar Association president. We want to note our view that the law society has consulted widely with all relevant stakeholders within the legal community and it is our view that the law society is the appropriate regulator. My friends will expand on that point, and perhaps we could turn our submission over to Ms. MacLean, Queen's Counsel.

Ms. Virginia MacLean: Good morning, members of the committee. One thing I'd like to emphasize before I start is the fact that the last presenters clearly indicated to you what the Ontario Bar Association was. I was very pleased to hear that from the last presenters. We are the largest volunteer association of lawyers in Ontario and we are a branch of the Canadian Bar Association, which is the largest association of volunteer lawyers in Canada. So we represent a substantial number of members in this province and we come to you from that perspective, which also explains why we have been involved in this process for a very long time.

Right back in 1986, there was a private member's bill before a committee of this Legislature and that bill was going to regulate paralegals. That particular bill did not proceed. We had a position on the bill. We attended before the committee back in 1986-87. It died on the order paper. In 1988, the then Attorney General, Ian Scott, established the task force on paralegals, chaired by Professor Ianni of the University of Windsor law school. That was the penultimate report on paralegals. That was in place, and it was finished. He went about the province, he did studies, he met with people, he prepared his report and it was submitted to the government in 1990. Now we are into Mr. Kormos's lifetime.

In 1990, that particular task force included a number of recommendations. We established a paralegals committee at that time and it was our recommendation that the cornerstone of consumer protection in professional regulation is allowing the public to identify different legal service providers. The consumer must be able to make an informed choice and distinguish regulated

professionals from other legal service providers, and they should be able to distinguish among regulated legal professions.

In 1998, we established a paralegals task force. I would note that the Ontario Bar Association, or the Canadian Bar Association—Ontario as it was at that time, has been driven by our members. Our members see the messes that were left by paralegals. They had to clean them up, and they had great concerns. That's where we came from, where we said there is a need to regulate paralegals.

In 1998, we undertook to retain a consultant to do a survey of 1,400 Ontario residents to see what their perception was of paralegals. One of the interesting things that we found out is that the public didn't realize that paralegals weren't regulated. They had a misconception about the regulation of paralegals, and although they were cheaper—it was the regulation and lack thereof that was making them cheaper—they had no concept. But in that survey they certainly supported regulation of the paralegals.

So we're down to the point in 2000 where we had input into the Cory commission that was the appointment of the government. That commission inquiry that was held in 2000 resulted in a report in May 2000. We attended at those hearings and were present every day. We operate through sections that have particular special interests in a number of areas. Our section chairs attended and made presentations to Mr. Justice Cory throughout those hearings.

We're now into 2004. The Law Society of Upper Canada prepared a consultation paper on the regulation of paralegals. That regulation paper brought together the interested members of the profession in trying to address the issues relating to regulation of paralegals. We initially took the position that we were opposed to the law society—the regulator of the legal profession—regulating paralegals. We agreed initially with Mr. Justice Cory that the paralegals should be self-regulated. But realizing the economics of the situation and realizing the reality of who is out there as paralegals that we didn't know, we thought that what was being proposed was the right answer. As President Morton has indicated, we strongly support the law society as the regulator.

We're now up to the position that we think the law society is the most appropriate body, and we think they can effectively regulate and enforce paralegal activity. However, we do have a number of fundamental concerns and differences with the law society with respect to the bill which is before you, and with schedule C of Bill 14. Steven Rosenhek will now address those particular issues.

Mr. Steven Rosenhek: We're obviously very pleased to be here to make submissions on this long-awaited bill to regulate paralegals. As Virginia MacLean has told you, OBA has been studying, making recommendations, advocating and working with stakeholders for more than 20 years, and making recommendations to successive governments for more than 20 years, on this issue.

We wish to make three recommendations, which are directed to the protection of the consumer of legal services. We believe that our recommendations, if accepted, will reduce confusion in the mind of the average member of the public, who we feel should be able to make an informed, knowledgeable choice as to which service provider he or she wants to hire, arrived at with a clear understanding of who they are hiring and the services that that person is entitled to perform.

Recommendation 1: We recommend that the legislation use the term "paralegal" or "paralegal agent" to describe non-lawyers who provide services. The bill, in its current form, describes those individuals as "persons licensed to provide legal services." We consider that terminology to be overly broad and potentially very confusing to the average member of the public.

We believe that the term "paralegal" or "paralegal agent" is far more appropriate and clear to the public. After all, it is the term that the government has been using for decades, as recently as its press release this week, which describes this bill as regulating paralegals. It's the way the law society described these individuals in its various consultation papers: the final report of the paralegal task force, Task Force on Paralegal Regulation, *Regulating Paralegals: A Proposed Approach*. It's the way Mr. Cory described them in his report, *A Framework for Regulating Paralegal Practice in Ontario*. Perhaps most importantly, it's the way paralegal groups describe themselves.

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So it's a term that has been used for at least 20 years, from the time the government first introduced the private member's bill, Bill 42, that Ms. MacLean referred to, in 1986. It's the way everyone has been describing these individuals in the submissions before this very committee. It's a term the public understands. It's a term the public is familiar with.

To use an amorphous term like "person licensed to provide legal services" is only to muddy the waters and guarantee confusion. The risk is that the consumer won't be clear on whether they're hiring a paralegal or a lawyer. You may say, "Is this a real risk?" It most certainly is. The letters of complaint that we receive from members of the public tell us loud and clear that consumers over and over again make the assumption, the mistaken assumption, that the person they are hiring is a lawyer, only to find out later that that person was a paralegal, and as you already have heard from others before you, there are some terrible horror stories out there.

We fail to see any good reason why the term "paralegal" isn't used. On the other hand, we see lots of good reason in terms of potential confusion to the public to use it. The point should be to make the public less confused, not more confused, and we believe that unless the terminology is changed, the public will be confused. We urge you to call paralegals what everyone else in Ontario—except, it appears, the legislative drafters of this bill—calls them: paralegals.

A related recommendation is that lawyers should not be described as licensees. The bill proposes two classes of licensee: one licensed to provide legal services, paralegals; and one licensed to practise law, lawyers. The average member of the public should, in our view, be able to clearly differentiate between the two types of service providers. Calling them both "licensees" will definitely confuse.

A picture is worth a thousand words. This is found in our submission at page 13. I ask you rhetorically, will the average member of the public be able to note the subtle distinction between these two business cards: one, which describes Tim Jones as licensed by the Law Society of Upper Canada to provide legal services; and the other, which describes David Smith as licensed by the Law Society of Upper Canada to practise as a barrister and solicitor? We say to you, absolutely not. We urge you to call lawyers what they have been called for as long as there has been a Law Society of Upper Canada: members of the law society.

Recommendation 2: We recommend that the legislation contain a definition of "the practice of law." The bill, as it is before you, contains in section 1 a very broad definition of "the provision of legal services." It is designed to be so broad as to include everything that a lawyer and a paralegal will be doing in the future. We recommend that, in addition to that definition, there should be a definition of "the practice of law." The regulations made by the law society will eventually set out what paralegals are entitled to do pursuant to their licences. A definition of "the practice of law" would tell members of the public what lawyers can do. In that way, in our view, the public would be better able to understand the differences between the services that lawyers and paralegals can provide. That will reduce confusion in the minds of the public, and as a matter of public protection, consumer protection, we urge you to find that the public needs to know this in order to make informed choices.

It is not hard to do. There is a definition of the practice of law found in the BC Legal Profession Act, 1997, and the statutes of many US jurisdictions. In our view, the benefit of adding this definition to the practice of law will be to make consumers able to make more informed choices about the type of service provider they are hiring by drawing a clear distinction between the two.

Recommendation 3: We recommend that the bill state explicitly that the law society can exempt certain professionals on a class-wide basis. As you know and as you've heard from others, the current proposed regulations include the power of the law society to exempt certain professionals. These might include people like union representatives, trustees in bankruptcy, mediators, as Mr. Kormos referred to, etc. That is, of course, necessary because of the very broad definition of the "provision of legal services" that I alluded to earlier, under which these groups might otherwise be caught and subjected to licensing requirements. We just want to make clear, and we believe the law society agrees with this, that the law society can do this on a class-wide basis rather than on an individual basis. In other words, all trustees in bank-

ruptcy can be exempted, rather than on the individual application of each trustee who wishes to apply.

Thank you.

The Chair: We'll begin with Mr. Kormos: about five minutes each.

Mr. Kormos: Thank you very much.

Firstly, I appreciate you've shifted in your view as to the appropriate regulatory body, and there's an argument to be made. I understand the argument.

My question is this. You are leaders in the legal community. You're very experienced, talented people, as lawyers, as I presume all of you are. We've also had other litigators here. One of the things you do, one of the things you're skilled at doing, is making persuasive arguments. You persuade judges to make rulings that sometimes leave the public shaking their heads. You persuade juries to find on behalf of your client. You negotiate. You sit down and settle things with other litigators representing their parties by reaching compromises. Why hasn't the legal profession been able to persuade any substantial element of the paralegal industry that the law society could be an appropriate, fair and effective regulator? Why hasn't there been negotiation and compromise and accommodation such that—because it's awfully difficult to support this bill when there isn't substantial support for the proposition from the community of people who are going to be regulated by it. That's my dilemma. What's going on?

Ms. MacLean: I guess, Mr. Kormos, the issue is that there is no defined community. There have been meetings, and I'm fully aware that the law society has diligently met with a number of associations that hold themselves out as representing the paralegals. They've done this on many occasions. But they have split away and they have splintered, and there's no cohesive group that says, "We represent all paralegals." That is the difficulty. But there have been attempts made, and I'm fully aware of what those are.

Mr. Kormos: Okay, because the only paralegal who has supported the proposition has been Paul Dray, who is also a bencher, and unfortunately, by virtue of being a bencher, that, in the minds of many, perhaps colours his opinion.

The other issue is tolling agreements and the comments on the limitation period, because that's something that I think we are at risk of overlooking if we don't pay closer attention to it. We've had some discussion about it. I'm concerned and interested in, because you make reference to—for instance, the bank that imposes upon their customers a 30-day time frame within which to report a discrepancy in terms of banking balance. And you'll recall the Ombudsman's report yesterday talked about the forged cheque, \$4,900, that the Ombudsman only ordered half payment of because the customer wasn't able to prove that he had exercised appropriate care for his cheques. I just found that strange.

What about that scenario? Is it dealt with by the existing Limitations Act? Obviously not, because banks can do it, along with others. Do the amendments help at

all? Should there be amendments to protect consumers? I understand contracting and negotiating a tolling agreement, but should there be protection for consumers against that sort of arbitrary imposition? Because that's not extending the limitation period; it's seriously restricting it, isn't it?

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Mr. Wayne Gray: I think the answer to all of those questions is no. It was never dealt with prior to 2002 in the Limitations Act. There was no attempt to prevent contracting out of limitation periods, in particular shortening them. There was no attempt in the 2002 Limitations Act to deal with 30-day notice provisions in these types of contracts. In fact, one of the arguments has been that the parties can still enter into account verification agreements that limit the consumer's right to object to accounts for 30 days, and that this Limitations Act is not intended to affect that type of agreement. So it creates confusion as to what the intent was.

The Chair: Thank you. The government side.

Mr. McMeekin: Thank you so much for your presentation. The particular emphasis, or perhaps re-emphasis, on the importance of definition was, for me as a non-lawyer, particularly helpful.

I want to sort of pick up a little bit on where my colleague Mr. Kormos was around his sense of buy-in here. To do so, I would just reference the task force on paralegal regulation. I'm a bit of a history buff, so I go to the history first because it ties so intimately into process. It makes reference to Attorney General Flaherty, then it reads—this paragraph I found intriguing:

"In the spring of 2001, David Young succeeded James Flaherty as the Attorney General and indicated an interest in developing a regulatory framework based on consensus between the legal and paralegal communities. In a letter dated October 31, 2001, Mr. Young said, 'the government remains committed to protecting consumers who use the services of paralegals.' Mediation was proposed but deferred in favour of a process designed to develop consensus among the legal stakeholders."

I did note with some interest—I've gone up and down the list several times—there were some 61 groups consulted.

I guess my question, fundamentally, is, is it your position, do you believe, that the legislation, notwithstanding your concern about definitions, does in fact represent a broad-based consensus between the legal and paralegal communities with respect to how to move forward?

Ms. MacLean: That's a very difficult question to answer. Certainly I've been involved in this since the beginning, and I'm aware of what Mr. Young was attempting to accomplish. There were meetings, and everything was discussed. To the best of our knowledge, as the legal profession and all the major associations involved who are lawyers, we did try to include as many of the paralegal groups as possible. There was an attempt, and I think it's the best attempt that was made, to bring them together. As you can see from this committee—all I

can say is yes, I think there was an attempt, and I think it's as good as it's going to get in terms of getting them together.

Mr. McMeekin: That's fair. I guess our dilemma here is, usually if something is being communicated as a consensus, it's a little more obvious than it appears to be before the committee.

Ms. MacLean: Unfortunately, they aren't incorporated. They splinter away. That's the difficulty we have in dealing with them.

Mr. McMeekin: That's a dilemma; I appreciate that. Thanks.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you for being here. I think we appreciate the dilemma with respect to trying to achieve a consensus, but we're being told on a fairly regular basis that there is widespread support, and they seem to be somewhere out there in the ether. We're not hearing from them, if indeed that support is there amongst that particular profession.

I want to say at the outset that I am more than a little disappointed in your recommendation that I'm reading here that justices of the peace should be holders of Canadian law degrees. The great unwashed may think that's a little bit self-serving and may interpret it in that way. There are others from the outside who think the profession is a bit incestuous.

I guess I look askance at this because my uncle was one of the last lay judges in this province. He was a police officer, a deputy chief of police in Brockville, and I know the profession. A lot of members of the profession resented someone sitting on the bench who didn't have LL.B. behind his name. But I talked to so many people in the policing community, and more broad-minded members of the legal profession, who thought he was probably one of the best provincial judges to ever sit on that bench—common sense: "Get on with the job."

I've talked to another one who was one of the last lay judges too who served out of London who went into a court. Many of these people didn't get the permanent positions; they had to be relief judges because of the bias against them. He went into a court where there was a three-month backlog, most of it because of adjournments granted by the judge. He cleaned that up. If you'd had three or four adjournments, "Get on with the case," and he cleaned that backlog up in the two or three weeks he was relieving.

When I see the members of the profession saying, "We're the only people who can do this job," I want to tell you I'm one guy who gets my back up a little bit about that sort of thing.

I think a lot of members of the public, the great unwashed, would share that perspective. I'm one who thinks, in terms of JPs, that we should have a group of JPs who are on a per diem basis, who can work the three-o'clock-in-the-morning calls from the police. The folks who are now in this fully salaried lifestyle think of themselves as a court sometimes in the worst way—anoointed, not appointed—and that's another thing that irks me to no end.

In any event, I've gotten that off of my chest. I know that some of the views on paralegals that I am surprised at include recommendation 2 on page 12: "The services that paralegals can perform will be determined by the law society and outlined in the regulatory bylaws." I guess you're supporting that. I'm curious, given that you were listening to the previous witnesses, as to why you have taken that stance. I suggest that the law society can exempt on a class-wide basis, leaving those tools, if you will, in the hands of the law society. Certainly we're hearing significant concern from regulated professions who are going to be captured by this. I'm wondering why you felt compelled to support those initiatives.

Mr. Morton: Perhaps I could begin, Mr. Runciman. Thank you for raising those concerns. There is no question that the lay provincial judges and the lay justices of the peace have done a magnificent job, many of them. There's also no question that per diem or part-time JPs are necessary, and we encourage the enhancement of those numbers.

The main reason we suggest that justices of the peace should be drawn from qualified lawyers is because their work is of tremendous importance and it is equally important, we say, as the work done by Ontario Court of Justice judges and indeed Superior Court of Justice judges. They do a different job, but their job is equally important, and for the present, Ontario Court of Justice judges are not lay judges. The same qualifications, the same requirements ought to apply. We shouldn't have a justice system where the qualification, if you like, of an individual who can keep people in prison for a lengthy period or release them varies, as it were, from place to place.

Mr. Runciman: What do you think about the requirements for your mandatory linguistic duality and gender-balanced diversity? Those are mandatory requirements under this legislation for a JP appointment.

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Mr. Morton: We don't have difficulty with that. We think the justice of the peace bench should reflect society as a whole. We do think, however, that in addition to that, justices of the peace, particularly because of the very complicated situations they face, and we see the bail situation has been in the media a great deal, should have the full qualifications of being called to the bar.

Mr. Runciman: I disagree.

Mr. Morton: And I respect the disagreement. I'd ask Mr. Rosenhek to address the remainder of your comments.

Mr. Rosenhek: With respect to the issue of exemptions, because we consider the law society to be the best, most experienced and most appropriate regulator, we consider that they will act appropriately, fairly and even-handedly in respect of exemptions. What we're focusing on is the fact that there may not be clarity in the bill as it now reads in respect to the issue of class-wide exemptions. There's an issue as to whether or not the government could also have a power to exempt if it considered there to be an inappropriate way in which that was being done.

But for our purposes, we're satisfied that the law society will act fairly. It has already indicated in a preliminary way to a variety of groups that have approached it that it intends to exempt them and to do so in an appropriate way in the future, should other groups come along. Therefore we have some confidence from those types of assurances that have been given to date.

The Chair: Thank you very much for your presentation.

ASSOCIATION OF LEGAL DOCUMENT AGENTS

The Chair: The next presentation is from the Association of Legal Document Agents.

Mr. Ken Mitchell: I can't stay away from this place.

The Chair: Good morning. You may begin your presentation, but I'm going to have to get you to state your names for Hansard. Thank you very much.

Ms. Eileen Barnes: Good morning, Mr. Chair and members of the committee. My name is Eileen Barnes. I am the current president of the Association of Legal Document Agents and the Paralegal Society of Ontario.

With me today is Ken Mitchell, consultant to the PSO, who will answer any questions about the technical aspect of our white paper which has been distributed to you today.

I'll tell you a little bit about my own background. I've operated my business as a paralegal practising in family law for 18 years. I've completed most of the Institute of Law Clerks of Ontario courses, including one in family law in 1998. I'm currently close to completion of a certificate in family mediation at McMaster University.

I would like to give you the paralegal perspective today.

The paralegal paradox: Throughout the course of these public hearings, we have heard over and over again from members of the Ontario bar and their fellow travellers that those paralegals can't self-govern because they can't get their act together. We have heard many pejoratives from our lawyer colleagues to describe our profession, words that I will not dignify by repeating them here. Yet, despite the hyperbole of Ontario barristers and solicitors, every day thousands of Ontarians rely upon paralegals for the most basic legal needs: for affordable access to justice.

I am here today to tell you a different story—the story of how paralegals arrived at where we are today and the story of what we have done to prepare for tomorrow. I will begin by walking you through our brief 25-year history, and then I will tell you about our solution. Ms. MacLean has already given a brief summary of the history, but I will give it to you from the paralegal perspective.

In the late 1970s and early 1980s, a growing number of legal agents began representing people in court for a fee. No case law supported their advocacy; these agents were prosecuted vigorously by the Law Society of Upper Canada under section 50 of the Law Society Act, which reads:

"Except where otherwise provided by law,

"(a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor."

In 1980, the professional organizations committee of the Legislature considered and rejected paralegal practice.

In 1983, in what I believe is an unreported case, Karol Belkowski, who had been charged with unauthorized practice under section 50 for the heinous act of producing paperwork for uncontested divorces, was acquitted. Mr. Belkowski had taken this business over from his father, so obviously this practice was nothing new at the time.

In 1986, the Divisional Court, "creating a new calling of paralegal," handed down the POINTTS decision. The law society did not appeal the POINTTS decision.

On June 16, 1988, then-Attorney General Ian Scott is quoted in Hansard announcing the Ianni commission: "There are estimates that now as many as 1,000 paralegals are operating and carrying on business in Ontario."

He added: "Bill 42, a private member's bill, was before the standing committee on the administration of justice in May and June 1987. The bill, it should be noted, proposed that the Law Society of Upper Canada, through a subcommittee, should regulate paralegals in Ontario. It would appear that the solution proposed by Bill 42 is not the appropriate answer to the paralegal question in Ontario at this time, but it also appears that there is a consensus among interested groups in this area, including the paralegals who appeared before the legislative committee, that further study of the larger issues is needed because we are, especially if their position is correct, on the frontier of what may be a profound change in the marketplace of legal services."

In the same debate, NDP leader Bob Rae stated: "I refer the Attorney General"—

Mr. Kormos: I was with you until now, Ms. Barnes.

Ms. Barnes: No, he's in support: "I refer the Attorney General in particular to questions of conveyancing and real estate transactions. I myself for a number of years have questioned why it is that lawyers need to have a monopoly on such simple legal transactions as the sale of a house, for example; whether it is essential, in fact, to have a lawyer's fee for that kind of transaction when it is, from a legal standpoint, a relatively simple transaction. Indeed, with computerized land tenure registries, it seems to me less and less necessary for the full panoply—and, I might add, cost—of the legal profession to be borne by the poor old consumer."

Ernie Eves, Premier in waiting, told the Legislature in the same debate: "This is a long-overdue announcement, especially in the light of the commitment by the Attorney General early in 1987 to introduce legislation immediately following the decision of the Ontario Court of Appeal. I say it is overdue because I note by the statement today that this report is not expected until the spring of 1989."

So when this committee asks what paralegals have been doing all these years about self-regulation, you should also ask, more appropriately, what have the successive Ontario governments been doing for the last 26 years?

The Paralegal Association of Ontario was the first organization of paralegals, and Brian Lawrie, president of POINTTS and the hero of the POINTTS decision, was one of its founders. This group was not registered as a non-profit corporation but as a business corporation because, at that time, the application to establish the PSO as a non-profit corporation was blocked, purportedly by the Law Society of Upper Canada.

In 1987, a group of paralegals in Ottawa were successful in registering two non-profit organizations, the Paralegal Society of Canada and the Legal Agents Society of Ontario.

Around 1990, the Institute of Agents at Court was founded by a group of traffic ticket agents to represent a niche group of paralegals. Also in 1990, the Ianni report was released, then immediately shelved. The government of the day didn't hear what it wanted to hear.

At that time, I was involved with the two Ottawa paralegal organizations: the PSC and Legal Agents Society of Ontario. After the release of the Ianni report, the law society redoubled its intimidation and prosecution of paralegals. Paralegals kept their heads down and each hoped that they would not be the target of a law society persecution.

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I was lucky. An investigator came to me, and he badgered me, trying to get me to draft a separation agreement for him. His ruse was transparent: He gave me a spiel about how his wife had thrown him out; he was living at the cottage and had no phone. I refused to prepare his separation agreement, but he pleaded and begged until I agreed to do it as a favour. I told him I would not charge him for what I drafted because I was not comfortable with it. Had I charged him money for the service I rendered, I would not likely be sitting here today. The law society would have persecuted me out of business. By the way, that same law society investigator who tried to set me up did set up an excellent paralegal by the name of Norine Earl. She was prosecuted and continues to be persecuted to this day. I will return to that later.

From 1991 to 1995, paralegals kept quiet, trying to stay below the radar of the Law Society of Upper Canada. Post-Ianni governments had failed us. We had no organization and, most importantly, no money to fight the law society. I inherited the two organizations, the Paralegal Society of Canada and the Legal Agents Society, by default as board members left the profession. The paralegal association was dormant except when the press needed a quote and Brian Lawrie's name came up on the Rolodex. The Institute of Agents at Court continued to meet, but their scope was limited to traffic court issues in the main.

In 1995, David and Jodi Putnam began to organize paralegals. All paralegals owe David and Jodi a debt of

gratitude. In April of 1996, the Legal Agents Society changed its name to the Paralegal Society of Ontario and, in September 1996, a new board was elected. Paralegals finally had a voice.

Unfortunately, all our members except for the court agents were afraid of prosecution under section 50. Our members over the years have been bankrupted trying to fight law society prosecutions. These prosecutions had the effect of dividing us; we could not bring ourselves to trust our leaders who stepped forward.

In 1997, the board of the Paralegal Society of Ontario decided to meet with the government and the law society. Errors were made; the Paralegal Society board at the time did not keep the process open and transparent. Our membership was split and the Paralegal Society of Canada was resurrected. Eight years later, in common cause, the Paralegal Society of Ontario and the Paralegal Society of Canada are again united, and that would include the Association of Legal Document Agents as well.

The history of the last eight years is the history of the law society and the Attorney General feeding the frustration and confusion of paralegals, talking only to those paralegals who agree with them and pitting them against their colleagues.

The Professional Paralegal Association of Ontario was a construct of "fellow travellers," paralegals who faced little threat from the law society and who were enthralled with the prospects of law society membership. Its members voted the PPAO out of existence because the PPAO board refused to represent the views of its membership.

As Mr. Kormos said, when the silver bullet trio, two of whom were ex-PPAO board members, appeared before you, they were unable to present to you that the majority of paralegals in Ontario support the law society. The fate of the PPAO speaks directly to that point.

Why does the Attorney General speak exclusively to those who agree with him and decline to listen to the views of the majority? As the president of the Paralegal Society of Ontario, I'm here to tell you that the views you have heard for the last two weeks are reflective of the views of the overwhelming majority of paralegals in Ontario. Yesterday, Linda Pasternak posited that the majority of paralegals are not here because they agree with Bill 14. Ms. Pasternak is misinformed. The majority of paralegals are not here for a variety of reasons: time, distance, client demands and, of course, fear of persecution by the Law Society of Upper Canada.

The paralegals who have appeared before you are the ones who have determined to take a stand: to fight for access to justice for our clients and to resist the seduction of promises of appointments to the standing committee or increased income from sustaining a lawyer monopoly on legal services. The Paralegal Society of Canada and the Paralegal Society of Ontario are united. We believe that the Institute of Agents at Court and OAPSOR, the Ontario Association of Professional Searchers of Records, will also join with us in a co-operative effort.

Our members want regulation, but not by the Law Society of Upper Canada. Regulation by lawyers can never provide true access to justice for our clients, the working poor in Ontario, who without our help are almost completely left out of the justice system today. So we have the PSO solution.

Let me ask you this question: How many lawyers do you think would submit to the rule of the law society without the weight of the penalties contained in the Law Society Act? The fact that paralegals have struggled so valiantly to organize is a testament not to failure, but to our dogged commitment to keep going until we are given the tools we need to accomplish our objectives. Paralegals have never received the slightest bit of assistance or encouragement nor have they been given the organizational tools that would help them self-regulate. The PSO wants this committee to give it those tools and then get out of its way. Give us a reasonable amount of time, free from the fear of prosecution, to put our plan for self-regulation into place.

The PSO white paper outlines a road map for self-regulation. There are other options. Unlike the Attorney General, we do not take the position that it must be our way or nothing. We are willing to look at any option, other than the law society, for regulation. Over the years, we have advocated for different regulatory models, including regulation by the then Ministry of Consumer and Commercial Relations, now the Ministry of Government Services, wherein a paralegal registrar would oversee the licensing of paralegals until such time as the profession was ready for self-regulation. During the Harris government, the trend was to self-regulation. Most of the professions regulated by that ministry were given self-regulatory powers.

The sticking point has always been the definition of "the practice of law," which has caused so much consternation at these hearings. To be honest, it is not a difficult task. It is only difficult when one of the parties—that is, the law society—does not want to cede any ground to paralegals and fights tooth and nail to keep paralegals out of as many areas of legal practice as possible.

Naturally, paralegals want the best deal possible; naturally, we want as broad an interpretation as possible on the areas of law in which we may practise. We, however, are reasonable. We understand our skill sets and our limitations. Our white paper on licensing and self-regulation contains a proposal for the areas of practice in which paralegals are qualified to perform. Mergers and acquisitions is not one of them; I don't know what paralegals Mr. Simpson of the paralegal task force talked to who said that they wanted mergers and acquisitions as an area of practice, but had he taken the time to consult with the PSO, he would have found our approach quite responsible.

The anger that some lawyers' groups demonstrate towards the very idea of paralegals treading on their turf is palpable. I would remind you of what Mr. Justice Cory had to say in his report:

"I would emphasize that it is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the province of Ontario. The degree of antipathy displayed by members of legal organizations towards the work of paralegals is such that the law society should not be in a position to direct the affairs of the paralegals."

The Paralegal Society of Ontario has taken the following steps to prepare for self-regulation and to advance a quality proposal for self-regulation to the government of Ontario:

- amalgamated three associations representing the interests of paralegals into one such organization, so there is now only one organization which represents the broad majority of paralegals, along with the Institute of Agents at Court, which is a separate organization we believe will co-operate with us;

- established a code of conduct for paralegals equal to the code of conduct for members of the Law Society of Upper Canada;

- developed a business plan for a self-regulated profession, including a funding model that requires no permanent funding by the taxpayers of Ontario;

- developed areas of practice guidelines consistent with the principle of affordable access to justice, the principle of competition in the marketplace and demonstrable need for competent and competitive services in specified areas;

- adopted community college educational programs as the minimum standard for admission to practice;

- put in place a mandatory errors and omissions insurance requirement; and

- developed grandfather provisions, including a peer review protocol.

The white paper distributed today contains the PSO plan for self-regulation. You have asked what we have done to prepare for self-regulation. Please read our white paper. It is a road map to a better way: for paralegals, for the court system and, most importantly, for the people of Ontario.

Thank you for your attention here today. I will now turn this over to Mr. Ken Mitchell, who's going to read a short portion from the white paper for you.

1030

Mr. Mitchell: Thank you very much, Eileen.

Before I give you just a brief overview of our white paper, I do want to respond to a speaker who preceded us from the Ontario Bar Association. He came to you and said, "We would really like you to define 'legal practice' in this bill." He said, "Take a look. They've done it in British Columbia." Don't buy that Trojan horse. Paralegals in British Columbia are not an endangered species; they don't exist. So if you want to put paralegals out of business in Ontario, follow the advice of the Ontario Bar Association.

I would like to take you through the white paper for licensing and self-governance, and I'm only going to highlight a couple of points. I think one will address a concern that Mr. McMeekin brought up yesterday, and

there may be others, and I'll be happy to answer any questions.

The Paralegal Society of Ontario, in its white paper, is urging the government to withdraw schedule C, introduce a professional paralegal act, and authorize paralegals to license and regulate themselves.

If we do this, a professional paralegal act can define the scope of practice, list exemptions, establish a licensing board, define powers and duties, establish qualifications for licensing, establish a board of governors, define powers and duties, and put together a monetary model that will make that organization self-sustaining. It begins with defining "paralegal" in this act. How do you do it? It's very simple.

The crux of the matter would be: A paralegal would be defined as a non-lawyer who provides legal services for hire or reward. Once you define it that simply, so many of the groups that have come to you and said, "Exempt us, exempt us," don't have any concerns. Those who are offering advice to friends and family or are doing it within an organization don't have concerns. Then you can get into the sectoral exemptions that were talked about, and some of those are very commonsense. If a person is providing legal advice to his own employer, his employer is in fact the regulator. If he's doing it for a government organization, the government organization is the regulator. So we can provide sectoral exemptions that get honed right down to the purpose of the regulation, which is to regulate the independent paralegal.

Our white paper proposes a licensing board, and yesterday Mr. McMeekin said, "Why would you have a majority on that board being non-lawyers?" We put a lot of thought into this, and there is a reason. Part of the chauvinism that is so apparent in the current bill before you and in the position of the law society is that they say, "We, lawyers, are the only stakeholders here."

So the present bill has this legal services providers committee with five lawyers, five paralegals and three laypersons, but we recognize there are many stakeholders: paralegals, of course; lawyers, of course, because they will be dealing with paralegals. But the court system, the judicial system, the deputy judges and the tribunalists from the Workers' Compensation Board and the landlord and tenant boards are stakeholders too, and they should have some say in this licensing process. Of course, the community colleges that have put together tremendous programs to train paralegals are stakeholders. Of course, the consumers, the people who use paralegals, are stakeholders. So let's have a board that's not overwhelming but gives all of those stakeholders a chance. That's why we said we'll be happy with four paralegals there and seven non-paralegals if it comes from a broad spectrum of society, not just lawyers. That's why we crafted it the way we did.

The licensing board will take care of licensing elements, complaints, disputes, resolution and enforcement, and the balance of this professional paralegal act should provide for a board of governors to take care of the other administrative elements: putting together the continuing

legal education programs, the insurance programs, running the organization and so on. So our professional paralegal act would divide the governance into two distinct bodies.

It contains a revenue model, which I think is very important. It hasn't been addressed so far. The current legislation is going to let the law society regulate, and the law society will come up with the cost of regulation and will charge that back to the paralegal in a huge fee. We've been told it will be as much as a lawyer will be charged. We're saying that the cost of regulation should be transparent. The person who is using it in the end should know what it costs. So our model would allow for a tariff or a charge on every paralegal bill that is paid by the client right up front so that they know the cost of regulation. That's transparency; that's fair.

Our vision is that if you give us the tools, as Eileen stated, and give us a time frame, we can do this in six months, because the hard work is done. We can regulate this profession, we can put it together, but we need the tools, and that's what our white paper gives you.

The Chair: Thank you very much. We'll start with the government side: about three minutes each.

Mr. Bas Balkissoon (Scarborough–Rouge River): I have two questions. I notice that this white paper is dated September 2006, but I suspect a lot of this has been put in place in the past. Has this, or a similar framework, at any time been given to a previous AG or the current AG?

Mr. Mitchell: Yes. We met with Mr. Zimmer just about this time last year, I believe it was, and he was the first to receive the white paper. We've distributed it to many MPPs, and I believe all the spokespersons have received it from us, the critics for the various parties.

Mr. Balkissoon: Have you had a chance to speak with the AG directly?

Mr. Mitchell: No, we haven't, and we have requested that opportunity.

Mr. Balkissoon: So your strong belief is that if you're given the tools and you're given six months, you'll be able to put it together.

Mr. Mitchell: I think we could do it in less than six months. Six months is a very reasonable period of time.

Mr. Balkissoon: Thank you very much, and thank you for taking the time to be here.

Mrs. Van Bommel: Just a couple of questions to Ms. Barnes. How many paralegals are there in the province? We seem to be having difficulty getting a handle on the numbers.

Ms. Barnes: Estimates range from 1,000 to 5,000 or more. There were more of them floated at other times. It depends on how you define a paralegal. There are a lot in the ethnic community where they don't even advertise; it's just word of mouth. It's really difficult to get a hard number that you can work with. But I would say, given my experience with them, there's probably somewhere in the neighbourhood of between 2,000 and 2,500 that we would be able to identify.

Mrs. Van Bommel: How many of them are members of the PSO?

Ms. Barnes: The current list that we have right now is somewhere around, I think, 250 full members. The student members, I'm not sure; I believe that's around another 50 or 60.

Mrs. Van Bommel: I also noticed that on the second-last page of your presentation you were talking about the work and the steps you've been taking in terms of preparing for self-regulation. You talk about having developed grandfathering—we say grandparenting—provisions.

The whole issue of good character and being of good character: How do you define that? Do you have a standard or guidelines that would help you if you were ready to do the grandparenting? Because, like you say, there are so many people out there that you really can't identify at this stage. How would you bring them in in terms of grandfathering, and do you have guidelines for good character?

Ms. Barnes: Yes, we do have guidelines for good character. They would have to have references. We would have to be able to identify that they had been in practice for a certain length of time. We would need to have samples of their work. But definitely those are guidelines that we would expand upon if we—maybe Ken can—

Mr. Mitchell: Perhaps I can take you right to our white paper, schedule C, where we have eligibility for licensing.

The Chair: If you could just finish very quickly.

Mrs. Van Bommel: That's good. I'll look at that, then. Thank you.

The Chair: Mr. Runciman?

Mr. Runciman: Thanks for being here today. I think your white paper is impressive. It does lay out a solid road map to self-regulation, although I think, not to be too cynical, the die is cast. We have this legislation in front of us and I suspect the die was cast a number of years ago when Mr. Bryant was appointed as Attorney General. Congratulations on doing this fine piece of work. It's regrettable. I don't believe it's going to carry the day at this stage. Maybe I'm a cynic, but it's difficult to see Mr. Bryant and his colleagues backing away from this in any significant fashion at this point in time.

1040

Your first submission—the pages aren't numbered, but you're talking about the Professional Paralegal Association of Ontario and the history there. We've had a number of people appear before us, the law society and others, who have talked about the disintegration of that organization, which I guess was created in the wake of Justice Cory's report and recommendations on self-regulation. This has sort of been cast in the light that getting paralegals together is like trying to herd cats, that this is a pretty tough group to pull together. They suggest quite clearly that the reason this organization wasn't a success was because of that fact; that you folks couldn't find a clear path to proceed, unlike your white paper on licensing which you have before us here; that you're the authors of your own demise, if you will. I'd just like to hear your view on it, because you're suggesting here that

this was—I'm putting a word in here that's not here—a conspiracy, if you will. They refused to represent the views of your membership and so this was a design to frustrate you.

Ms. Barnes: No, I wouldn't call it a conspiracy. I wouldn't go that far. It's just that paralegals are not lawyers. Most of us are sole proprietors. We work on a very thin margin of income and we don't have a lot of time to spend on these issues. When the PPAO was first started, they were supposed to be a lobby group for the other organizations, and that was how it was started, but when the Cory report was shelved, what happened was that everybody went back to earning money. I mean, we have to live. The PPAO then went on their way and what happened was, they started talking to the law society and the Attorney General and they were brought around to the idea that the law society was a good idea. By the time they actually came back and told us, the members, we decided that wasn't the case and we didn't agree with it.

Mr. Kormos: I don't know what the status is of this bill. The parliamentary assistant for the Attorney General is a no-show for the third consecutive day now. That says something, because the convention is that the PA represents the minister, in this case the AG, and stewards the bill through the process. So for three days in a row the parliamentary assistant can't be bothered being here. Part of me says maybe the government realizes this bill has lost traction. At the same time, it's a majority government. In three years' time I haven't seen very many government members vote against government legislation, including time allocation motions. So the government could use time allocation to force this through, and I suspect that right now in the Ministry of the Attorney General there's consideration of that. I don't know if Mr. Runciman agrees, but I suspect that's being considered. So maybe, as they say down in Niagara, you're peeing in the wind.

Interjections.

Mr. Kormos: It's all for naught. It's a done deal. But having said that, I appreciate you'd like to see the bill scuttled, right? Shelved?

Ms. Barnes: Yes.

Mr. Kormos: The problem is, you're saying that in six months you could set up this regulatory regime. The reality is that in 20 years it hasn't happened—not through your fault. I suspect one of the reasons is because the very people who most need regulation are the ones who wouldn't participate and collaborate: the renegades, the fringe operators etc. who wouldn't collaborate in this broader effort.

Why aren't paralegals who are concerned about the bill proposing backup positions, saying, "Well, if the bill's going to pass in any event, at least accommodate us to this extent: (a), (b), (c) or (d)"? Why hasn't that happened? Have we heard any of that yet? We haven't heard any of that.

Mr. Mitchell: Yes, I think you did. I think Bruce Parsons, the past president, spoke two days ago and really did give a good summary of the flaws in schedule

C that could be rectified to make a bad bill better. That was the purpose of his presentation. I take it back to Bruce Parsons's presentation.

Ms. Barnes: Also, I have to reiterate that we would prefer to see schedule C scrapped, and that is why basically we don't really want to offer—because we think, to allow the law society to step in with their own bylaws—

The Chair: Thank you very much.

Mr. Kormos: Check that wind direction.

CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS ONTARIO ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS

The Chair: The next group is the Canadian Association of Insolvency and Restructuring Professionals and the Ontario Association of Insolvency and Restructuring Professionals. Good morning.

Mr. Norman Kondo: Mr. Chairman and honourable members, we thank you for this opportunity to speak to Bill 14. My name is Norman Kondo and I am the president of the Canadian Association of Insolvency and Restructuring Professionals. When I started, we were actually just the CIA, Canadian Insolvency Association. I am a lawyer but I've spent my career in the not-for-profit sector. I remember when the chair of the association hired me, he said, "Norm, a trustee is someone who wants to be a lawyer but wants the respectability of being an accountant." So the majority of our members hold professional designations as accountants.

Making the joint presentation with me today is Angela Pollard. She is the president of the Ontario Association of Insolvency and Restructuring Professionals. She is a certified management accountant, a certified fraud examiner, a trustee in bankruptcy, a chartered insolvency and restructuring professional and in practice full-time. She will be able to describe to you the types of assignments that our members, their employees, agents and servants perform on a daily basis and why they do not require regulation under Bill 14.

We did a written submission in June. I believe the committee members were provided with that, but they may not have them here today, so I may just refer briefly to the introduction as to who we are. We represent at least 80% of the practising trustees in bankruptcy in Canada. As I mentioned, our members hold the CAIRP certification mark and they act as trustees in bankruptcy. They are officers of the court. They carry out statutory duties under the Bankruptcy and Insolvency Act, including the preparation of various legal documents, all under the supervision of the superintendent of bankruptcy, but members also act in other capacities, including monitoring under the Companies' Creditors Arrangement Act, court-appointed interim receivers, court and private

appointed receivers, receiver and manager and agents for secured creditors.

The primary reason that we are here today is to urge you to exempt trustees in bankruptcy, their employees, agents and servants from Bill 14. We would ask that this exemption be specifically part of the bill and not leave it to exclusion by regulation or in the bylaws of the law society.

As we understand it, the purpose of Bill 14 is very clear. It's the result of long discussion and negotiation to address the issue of protecting the public from unregulated providers of paralegal services.

1050

If I could just read a little excerpt from the bill—this is the part that caught the attention of our associations. It's in paragraph 7, subsection (6). It talks about the provision of legal services and it says:

"Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following: Selects, drafts, completes or revises.... a document that relates to a matter under the Bankruptcy and Insolvency Act (Canada)...."

I guess I do find it rather strange to be here as the president of a national association talking about Ontario legislation that may affect my members.

Trustees in bankruptcy, their employees, agents and servants are regulated in at least one of the following ways:

There is the code of ethics for trustees, enacted as rules under the Bankruptcy and Insolvency Act, which require that: "Trustees, in the course of their professional engagements, shall apply due care to ensure that the actions carried out by their agents, employees or any persons hired by the trustees on a contract basis are carried out in accordance with the same professional standards that those trustees themselves are required to follow in relation to that professional engagement."

As I mentioned before, the vast majority of practising trustees belong to CAIRP, and rule 11 of our rules of professional conduct reads as follows: "A member who is associated with non-members in professional practice shall be responsible to the association for any failures of such associates to abide by these rules of professional conduct." And we do have a professional conduct committee and discipline committee and a very formal process to deal with complaints from the public.

About 70% of our members hold professional designations in accounting or law, as well as being licensed as trustees in bankruptcy—the majority of these are chartered accountants—and they are all subject to regulation by their respective professional bodies.

The institutes of chartered accountants of Canada recognize members of our association as specialists in insolvency and restructuring, and they actually allow them to use the CA.CIRP designation to denote that they are chartered accountants who have a unique specialty in insolvency and restructuring.

I would suggest that the law society licensing trustees in bankruptcy, their employees, agents and servants

would be analogous to requiring that Ontario lawyers, their employees, agents and servants who practise in the area of insolvency and restructuring be licensed by the Superintendent of Bankruptcy. The national insolvency section of the Canadian Bar Association has 1,700 lawyers who denote themselves as practising in this area.

Other assignments that our members carry out: As noted in our submission, Parliament recognizes the need for skilled, regulated professionals to carry out insolvency and restructuring work. Not all of this work is done under the Bankruptcy and Insolvency Act. Statutes of Canada, chapter 47, which has been enacted but is not yet in force, requires that receivers and CCAA monitors be trustees in bankruptcy. That exact reference is in footnotes 7 and 8 on page 4 of our written submission.

In summary, I'd just like to emphasize again that our members, their employees, agents and servants are regulated, they continue to be regulated, and Bill 14 should specifically exclude them.

Now Ms. Pollard will discuss some of the situations and some of the documents that our members prepare in actual practice so that you can have an appreciation for the type of work they do and the type of supervision that it's subject to.

Ms. Angela Pollard: Thank you very much, Norm. Thank you for the opportunity to allow us to speak here. I do really appreciate it. I think, as the president of the Ontario association and representing all trustees in bankruptcy across the country, we're very concerned with the bill and how it's going to increase our regulations, being regulated by the law society.

I don't know how many of you are familiar with insolvencies, but I'll give you a general idea of what we do so that you have an idea. A trustee in bankruptcy, if a person is insolvent or feels that they have financial problems, an individual, will go to a trustee in bankruptcy and meet with them to go through their financial situation and their financial affairs. The trustee will take that person through a number of steps outlining the Bankruptcy and Insolvency Act, the obligations that the debtor will have in becoming an undischarged bankrupt and, as well, they will go through options that are available. In the Bankruptcy and Insolvency Act, there are a number of options that are available to an individual who has financial difficulty. I know that some of the documentation has been submitted, and I can see some of you are looking at that documentation as I'm speaking.

What happens is, the individual comes in and meets with the trustee; they go through the financial affairs of the bankrupt—the individual. They come to a solution to finish or solve their financial problems. In your documentation you'll see the that first form is actually an assignment in bankruptcy. It's a legally binding form that actually makes the individual bankrupt. It allows them to start a fresh life; it allows them to look at unloading their debts. So this form, which is a standard form, is a prescribed form under the Bankruptcy and Insolvency Act, which is a federal act, and all trustees have to prepare the same form. It's a standard form.

Once this form is prepared, a statement of affairs is also prepared. That outlines all the assets, the liabilities, the creditors and the actions that the individual has taken over a period of time, in accordance with the Bankruptcy and Insolvency Act, and it is a prescribed form. Then what would happen is that these forms would be sent to the Superintendent of Bankruptcy's office. The Superintendent of Bankruptcy would accept these forms and provide the individual with a file number—a number that shows that they have now filed an assignment in bankruptcy. The trustee and its staff, agents and servants will go through the collection of the assets, dealing with the creditors and a creditors' meeting if that's required.

Once the bankrupt has completed all of its duties, it will come up for its discharge. The individual will get discharged from its debts. There are two ways that that's done: The Bankruptcy and Insolvency Act allows the trustee in bankruptcy to issue a certificate of discharge which legally releases them of all of their debts or, if there have been problems with the administration of the estate, the trustee will make application with the court to have the court hear this matter. The court is generally a registrar in bankruptcy or a judge who will hear the matter and determine the fate of the bankrupt. So in both cases in these situations and individuals, we are regulated by the Superintendent of Bankruptcy and we attend in court to deal with problems that we cannot deal with under the authority that is given to us under the Bankruptcy and Insolvency Act.

If an individual or a corporation comes in to us and they're not really totally insolvent, they have some assets, some reasonable assets where they can make a proposal to their creditors, we will prepare proposal documentation. You've probably heard of a proposal out there, but in most cases it really would have been under a CCAA. Air Canada is like a proposal—just a larger proposal. Canada 3000 was a proposal, but it's really a CCAA; it's another form of a proposal.

What a proposal is, is the debtor will come in and they will say, "These are the assets we have and this is what we can offer to our creditors." The creditors' debts will be compromised, so they will get 10 cents on the dollar, 50 cents on the dollar, whatever it is, for their debt. The creditors have the right to approve or reject the proposal. If the creditors accept this proposal, then a trustee in bankruptcy will attend in court to get the court to sanction that proposal. So, again, we're going through a number of steps to make sure that the proposal is properly filed and meets with all the terms and conditions that are under the Bankruptcy and Insolvency Act and that the court feels are necessary in order to protect all of the stakeholders involved in a bankruptcy and insolvency process.

1100

The other type that Norm had mentioned was a monitor under the Companies' Creditors Arrangement Act. Most of you have probably heard of those. They're large insolvencies of large corporations where trustees in bankruptcies generally act as monitors and advisers to the

corporations themselves. What we do is deal with the contracts that are out there with the creditors, we deal with the union, we deal with the landlords and we enter into, with the company and with the blessing of the court, a number of different contracts and arrangements to help this corporation to be able to survive, move forward and come back out of the CCAA.

We assist in the preparation of the plan of arrangement. It's a legal document that is binding upon all the creditors and all of the stakeholders once it is accepted. We attend in court on a regular basis for approval of all the steps that we take under a CCAA application. So even though a CCAA is not monitored by the Superintendent of Bankruptcy, it is monitored by the court.

I just wanted to give you an idea of the number of different things and how we are monitored as we go along, besides the fact that most trustees are members of CAIRP and, if they practise in Ontario, would be members of OAIRP. Most of our members are qualified professional accountants. Some of our members are certified fraud examiners. A significant number of our members have other regulatory bodies for professional designations that we're presently holding.

What I really would like to reiterate is we are looking for an exemption for the trustees in bankruptcies, their servants, their agents and employees, because they all assist us in performing the documents and our work in order to assist an individual or a company to restructure.

Norm, do you have anything else?

Mr. Kondo: I have nothing else.

Ms. Pollard: Thank you.

The Vice-Chair: Just give me a moment. I need to see where we are in this process. I believe we have about 15 minutes at this point for questions and comments. I need to understand who is in the rotation. Mr. Runciman, I'll let you start the rotation.

Mr. Runciman: That's very generous of you, Chair.

Thank you for being here. I appreciate it. I guess we're going to hear today and perhaps tomorrow from a number of already regulated professions that are captured by this legislation and are being re-regulated, if you will. My perspective on this is that we should have a blanket amendment to the legislation which will remove all of those already regulated professions from being captured by this expanded authority.

I'm curious about your involvement in this process, if there was any. Were your organizations consulted at all in terms of the development of the legislation to regulate paralegals?

Mr. Kondo: No. This came as a great surprise. I actually discovered the existence of Bill 14, was informed of it, by Michel Gérin from the Intellectual Property Institute of Canada. It came as a great surprise.

Mr. Runciman: What have you done subsequently? Have you had any contact with the Attorney General's office to convey your concerns, any direct, face-to-face contact with the Attorney General, his parliamentary assistant or any of his staff?

Mr. Kondo: No, we haven't.

Mr. Runciman: Have you made any attempt to discuss your concerns with them?

Mr. Kondo: No. We were relying on the committee hearings to make our position clear. It seemed fairly obvious, I guess.

Ms. Pollard: The Ontario association did go to the Ontario Bar Association and discuss this matter with them. They were kind of surprised to see that we were part of the regulations and that we would be captured under it. As you heard them speaking earlier today, they specifically requested that trustees in bankruptcies be exempt from this process.

Mr. Runciman: I find it curious that organizations such as yours are apparently being caught off guard by some of these initiatives. Obviously you don't monitor at the provincial level. Do you monitor at the national level? It's surprising that there's no ongoing effort, especially with an interventionist government like the one currently in office, to monitor their activities and their initiatives.

Mr. Kondo: I guess the real answer to that is we are a national organization. We have fewer than 900 members. We just don't have the resources to be monitoring every piece of provincial legislation particularly. The resources and time and energy of our members on a volunteer basis just to deal with federal legislation is significant, and the Ontario association does not even have any full-time staff.

Mr. Runciman: I'm not endorsing any company, but there are private providers that can monitor at very modest costs to your organization if something pops up that would have an impact, either directly or indirectly, on your members. I would suggest, given the tilt of this current government, that you consider something like that in the future.

Mr. Kondo: We have looked at that. On a federal basis, that's not a problem. We have an excellent relationship with the legislators and with the policy people, but on a provincial basis, it's just not something we—

Mr. Runciman: The difficulty is getting changes once the door has been opened, and that's always a challenge.

Mr. Kondo: I appreciate that.

Mr. Runciman: Thank you for being here.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: I'm sorry I wasn't here in the room. I had to make some phone calls, and while doing those, I was monitoring you on the closed-circuit television.

I understand the issue; I understand your point. You get no quarrel from this side, from either Mr. Runciman or me. It's a fundamental problem with the way this whole bill was drafted. Everything in the bill is unique in terms of just shotgunning—hyper-shotgunning—and then saying, "Oh, by the way, anybody who isn't to be regulated will be specified, not even by regulation of the government"—although I'm not a fan of that; I'd rather this were being debated right here and now and we developed a definition of "paralegals," who everybody

hopes to see regulated—"but by bylaw of the law society."

We already heard a reference to the need for some sort of appeal from the law society. No provision for that, which I find interesting.

Look, I know that at one point the government was hell-bent to get this thing passed, wrapped up, slid through the Legislature, but I really think, amongst other things, we've got to get the law society back here for what might be an extended period of time to respond to some of these issues and find out exactly how they respond to them and what they have to say.

This exemption by bylaw is nuts. It's not feasible, it's not workable, it's not practical, and it's not helpful. We could be solving it by defining "paralegal" in the first instance, which means we won't have to worry about a long list of exemptions talking about who it is the legislation intends to regulate. The issue of who regulates them is another one that's obviously still not resolved.

Thank you. You've brought yet another—not point of view, but another professional organization for whom there's no need—you shouldn't have to be here. You should be out there helping people who—seriously—have serious financial difficulties as we lose more and more manufacturing jobs here in the province of Ontario and as electricity rates are forcing people out of their houses even though Mr. Parkinson gets a \$500,000 bonus for driving up electricity rates by—what, 55%, Mr. Runciman?

Mr. Runciman: Yes, 55%.

Mr. Kormos: Plus free rides for himself and kiddies on the Hydro One helicopter. And Reverend Ellie, Ms. Clitheroe—I don't want to leave Mr. Parkinson out there alone; this is a never-ending tale—Reverend Ellie—mind you, she's doing prison ministry. I don't know whether that's an acknowledgement on her part as to the real nature of her behaviour while she was at Hydro One. She's suing because she doesn't want to have a \$200,000 pension; she wants a \$250,000 pension.

The Vice-Chair: Mr. Kormos, can we stay to the topic of the day, please?

Mr. Kormos: That is on topic. We're talking about bankrupt Ontarians who can't afford to pay their bills, and Reverend Ellie Clitheroe wants to have a pension of \$250,000 instead of \$200,000 after ripping off the taxpayers for millions of dollars and sponsoring that boat down there in the Bahamas.

The Vice-Chair: Thank you, Mr. Kormos. The government side, please.

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Mr. David Oraziotti (Sault Ste. Marie): I have no further questions and the government side doesn't have any questions, but we want to thank you very much for coming in today and making your presentation.

The Vice-Chair: Thank you as well for bringing in your perspective.

Mr. Kondo: Thank you for hearing us today. I came by subway.

FNF CANADA AND CHICAGO TITLE
INSURANCE COMPANY OF CANADA

The Vice-Chair: I would like to call forward FNF Canada, please. Good morning, and welcome to standing committee.

Mr. Steven Offer: By way of introduction, my name is Steven Offer and I am the senior vice-president of Fidelity National Financial Canada. With me is Wendy Rinella. I'll let you introduce yourself.

Ms. Wendy Rinella: I was here this morning and I'm just here to lend my support to Steven. I'm the director of corporate affairs for First Canadian Title.

The Vice-Chair: Thank you. You have 30 minutes to make your presentation.

Mr. Offer: Thank you very much. As indicated earlier, my name is Steven Offer and I represent Chicago Title Insurance Company of Canada and FNF Canada. These two related corporations have operations in Mississauga, providing 250 people with jobs. As indicated, my colleague Wendy Rinella represents First Canadian Title and spoke earlier regarding related concerns of title insurers.

As title insurance and document processing companies representing almost 900 jobs in the province, we would like to begin by saying that we support the need for paralegal regulations and we support the law society as the body to do the regulation. However, while we recognize and support the importance of paralegal regulation, we have grave concerns about the consequences of the wording of the legislation and the breadth of unrestricted power provided to the parent of our competitor, the law society, through Bill 14.

I'll begin by giving a brief overview of what we do. We are actually involved in two major streams of business. The first is the direct sale of title insurance. Title insurance is a form of consumer protection that benefits the policyholder. A policyholder can be an individual, a corporation or a lender. The policy protects their interest in real property by indemnifying against loss that may be suffered if the title is other than as stated in the policy. It includes a duty to defend the insured's interest in the title in addition to the indemnity coverage. It also provides insurance in respect of several other matters in connection with title, such as access to the property and marketability. More importantly, it also provides protection with respect to what are referred to as off-title problems—defects, liens or encumbrances—that are not shown on the certificate of title, and it insures against some future events, the most significant of which is fraud.

Title insurance is not like traditional forms of property and casualty insurance that are distributed through insurance brokers. It is distributed to the members of the public through lawyers in the purchase of a home and is provided through a business-to-business transaction between two financial institutions—the title insurer and a commercial lender—when a lender will purchase a policy directly from a title insurer.

The model of operation for programs providing new homeowners and their lenders with a residential policy in a real estate purchase transaction is relatively similar for all title insurance companies. The lawyer advises the client on the purchase of a policy. The policy is then ordered by the lawyer from the title insurer and then sold through the lawyer to the new homeowner.

Our second line of business is the service we corporately provide to a lender through what we describe as lender programs. Under these programs, we provide a title-insured mortgage for the lending institution in accordance with what is referred to as the mortgage approval. This service is rendered by our companies to the lender. We provide no legal service to the customer of the lender, but it is important to note that the customer of the lending institution always has the option of obtaining a lawyer if they so desire. In essence, our companies provide an option in the mortgage transaction.

After giving a brief overview as to what we do, we'd like to now focus in on our concerns. There are potentially devastating consequences for us in this bill if it passes into legislation as is and if the law society exercises the full authority of power granted to it in Bill 14.

To fully appreciate the basis of our concern, it is important to know that sitting here today are representatives of only two of six title insurance companies operating in Ontario. One of our competitors is LawPro, a wholly owned subsidiary of the Law Society of Upper Canada that engages in the title insurance business. The law society is the sole shareholder of LawPro, which sells title insurance under the name TitlePLUS through lawyers to lenders and homebuyers. Six members of the law society board and executive, including the CEO, are members of the LawPro board.

It is equally important to know and understand that in addition to what we have just stated, title insurance as a product and an industry is highly regulated through the federal Office of the Superintendent of Insurance and their provincial counterpart, the Financial Services Commission of Ontario. In addition, title insurers must conform to many acts and regulations ensuring consumer disclosure and protection requirements. Unique to Ontario—and I think I'll just step aside for a moment; it's important to know that both of our companies, though headquartered in Ontario, are national in scope and conduct business in every province and territory—under regulation 666 of the Ontario Insurance Act, title insurers are required to have an external lawyer conduct a title search every time they issue a policy. As with all lawyers, the law society as their professional regulator may impose rules of professional practice, audit, investigate, discipline, fine and levy insurance premiums on lawyers providing this statutorily required service to title insurers.

As such, we are in direct competition for business sold through lawyers with a title insurance product owned by their professional regulator, which can, as I've indicated earlier, impose requirements and conditions on their activities related to title insurance. It is not currently a

level playing field when the lawyer's own professional regulator is involved in the same business.

Under the proposed definition of "legal services" in the bill—and I apologize for restating it in full—it is stated that in Ontario "a person provides legal services if the person does any of the following:

"2. Selects, drafts, completes or revises,

"i. a document that affects a person's interests in or rights to or in real or personal property," including family property.

The word "completes" in the clause I've just read captures the service that our companies provide. This is the service we provide to lenders. We have been told that this is an unintended consequence of the legislation, that the legislation was not designed to impact upon our business. But without change to the wording of the legislation, the worst-case scenario is that, the day after the passage of this bill, the law society would launch an investigation into our companies for the unauthorized practice of law or legal services and, using their newfound power of injunction, apply to the courts to put an immediate halt to our operations.

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This scenario is possible under the legislation because the definition of legal services is so broad that it captures our underwriting in lender programs and therefore enables the law society to launch such investigations. As well, there are no exemptions from the broad definition in the legislation. Exemptions under Bill 14 are the sole purview of the law society. The government retains no authority to grant exemptions. We, as companies, must rely on the goodwill of our competitor—the law society and its successive administrations—to provide us with an ongoing bylaw exempting our operations. Lastly, the law society has a new power to seek injunctions on businesses even though no prior conviction or charge exists.

And so, members of the committee, we bring to you some recommendations for your consideration, but before we do, we want to advise the committee that in addition to being here today, we have been part of a coalition with other industry and professional associations to raise concerns about the need for amendment to the legislation, exemptions in the legislation and the need for the government to retain authority to grant exemptions.

Now to our recommendations: As we indicated earlier, we provide a document-processing service to lenders. Under these programs, we provide a title-insured mortgage for the lending institution in accordance with the mortgage approval. The definition of legal services in Bill 14 is so broad that it would capture these business-to-business transactions. The public is not involved in these transactions between these financial institutions. As such, we would submit that these transactions should be exempt from Bill 14 as this is not, as we understand from the Attorney General, the intent of the legislation. So our first recommendation for your consideration is to remove the word "completes" from the proposed definition of legal services.

To our second point: Our companies, as part of our underwriting and on behalf of our lender clients such as banks, credit unions and other financial institutions, have been engaged in the completion of mortgage documents largely through computer programs and the advancement of technology. We have been using in essence the same operational model for over a decade, and there have been no concerns flagged by our regulator—OSFI or FSCO—with our practices. In addition, our model has not been the subject of complaints from the lenders whose interests we insure. So our second recommendation is to exempt in the legislation a person who provides any service that is primarily clerical or administrative or primarily involves the processing or production of data or documents where the service does not include the material application of legal principles and legal judgment by the person.

To our third recommendation: The mortgage documents that we prepare for a lending institution are title-insured. A customer relying on title insurance is afforded a no-fault-type indemnity as to the validity and enforceability of their interest in the land, be that as an owner or mortgagee. Title insurance is a product that provides consumer protections, as it protects the title interests of the policyholder. So our third recommendation is to exempt in the legislation any document the validity and enforceability of which is being insured by a licensed and regulated title insurance company from law society regulation.

Lastly, the only means to obtain an exemption in this legislation is to seek a bylaw from the law society. There are a number of problems with this approach. The law society has a board of directors elected by its members that changes regularly. There is no guarantee that there will be ongoing bylaw exemptions for our companies or other regulated businesses and professions. If enacted, Bill 14 would create uncertainty, as the law society would have sole discretion to grant and revoke exemptions to its paralegal regulatory regime. This lack of clarity on exemptions in the legislation creates instability for many professions.

Bill 14, in granting complete authority for regulating legal professions—both lawyers and paralegals—is moving in completely the opposite direction of recent reforms in the United Kingdom, where co-regulation with government, not self-regulation of lawyers, has been the outcome of recent reforms. That original paper in the United Kingdom is entitled Putting Consumers First.

Our companies consider it fundamentally irreconcilable that under this legislation we must request an exemption from our competitor. We are being asked to seek permission from our competitor to continue our business operations. The law society is our competitor.

So our fourth and final recommendation is to include in the legislation a regulation-making authority by the province to grant exemptions.

We recognize that Bill 14 fixes the problem of paralegal regulation for Ontarians. We ask that this bill not create other problems by passing Bill 14 without intro-

ducing amendments to fix these unintended and unanticipated consequences.

We thank you for your time. We are happy to take any questions.

The Chair: Thank you very much, Mr. Offer. Mr. Kormos. Five minutes each.

Mr. Kormos: Now just a minute: The bill very specifically provides for the law society, by bylaw, to exempt certain groups from their regulation. You believe that the law society is the appropriate regulator for paralegals. You do.

Mr. Offer: We believe there's a role that the law society can play in the regulation but not in the exemption piece.

Mr. Kormos: But is the law society the appropriate regulator for paralegals?

Mr. Offer: I believe there is a role that they could play. Yes, absolutely.

Mr. Kormos: So the paralegals should trust the law society to regulate them, I presume you're suggesting. No answer.

Mr. Offer: Oh, did you have a question?

Mr. Kormos: Yes. The law society should be trusted by paralegals to regulate them, huh?

Mr. Offer: Yes.

Mr. Kormos: And they should be able to trust the law society not to act capriciously or unfairly, right?

Mr. Offer: Yes.

Mr. Kormos: How come you don't have the same level of trust?

Mr. Offer: We are requesting in the legislation that the exempting powers be retained by the government. We believe that because we are in direct competition with the law society in two areas. The first is in the sale of title insurance policies and the second is in the work that we do with respect to providing a service to lending institutions. We think that the government is the area in which exempting powers should be found. That was the issue of our presentation.

Mr. Kormos: You make a point, and the paralegals make the same point, because they say they're in direct competition with lawyers with respect to the provision of a huge number of legal services and they think it's the government that should provide for scope of practice etc.

I hope you folks are getting ready, because Minister Phillips made his announcement with respect to the land titles fraud issue. It appears that he's finally going to address the Chan and Liu decision from the Ontario Court of Appeal, which basically had to reconcile two conflicting sections of the Land Titles Act, but there was nothing about moving the land titles assurance fund from the status of insurer of last resort. That should be of interest to your industry, shouldn't it?

Mr. Offer: Yes.

Mr. Kormos: And there was nothing about restoring the integrity of the land titles system to prevent the registration of forged or otherwise fraudulent documents. That's of interest to your industry, isn't it?

Mr. Offer: Absolutely. We think the statement of the minister last week is a good and important first step. We're going to be awaiting further action.

Mr. Kormos: I've got to ask you, because this raises again the whole role of title insurers: When you are called upon to access the land titles system to basically certify title for a lender, a bank, do you go beyond the documents? I think the courts called it the curtain principle, although it brings to mind visions of the Wizard of Oz, and you know what happened when you pulled back the curtain there. Do you go beyond the documents?

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Mr. Offer: It's an interesting question. In Ontario, in fact, the searches of title must be done by lawyers. We are the only jurisdiction in Canada where that regulation—regulation 666—does require that lawyers provide that type of report. There will be, in each title insurer, looking at not only what is on title but looking at potentially deleted instruments and things of this nature. But right now we are taking the registry system as it appears.

Mr. Kormos: If a discharge of mortgage—I'm not sure that's the current terminology—in land titles is registered, one should be able to rely upon that.

Mr. Offer: Interesting; those are exactly the questions and issues that are before lots of people: the integrity of the registry system and who can rely, who should be able to rely and who's protected. Statements of last week are important first statements but there's more work that has to be done on it.

Mr. Kormos: I'm looking forward to those committee hearings. You'll be there, won't you?

Mr. Offer: Possibly so; absolutely.

The Chair: Mrs. Van Bommel?

Mrs. Van Bommel: Thank you for your presentation. On your second page you talk about the lawyer advising the client on the purchase of a policy, which is your title insurance, and then the policy is ordered by the lawyer and then sold through the lawyer to the new homeowner. Do consumers approach you directly or is it always through a lawyer, and who makes the final decision? You say there are six title insurance companies in Ontario. Who makes that final decision about what company will be used?

Mr. Offer: In a traditional real estate transaction, the purchase of a home that many of us have gone through, the product of title insurance is brought forward by the lawyer, the client of the purchaser, to the purchaser. They will talk about what title insurance provides, its benefits, and the actual purchase of the policy will take place by the lawyer to a title insurer of their choice, the price of which will be incorporated into legal fees and disbursements.

Mrs. Van Bommel: So consumers never actually directly approach you?

Ms. Rinella: We do get phone calls and then they get directed back to deal with lawyers. Just to add to what Steven said, there is a rule of professional conduct for lawyers that they have to talk to their clients about all options to protect title, including title insurance.

Mr. Offer: It is important to know, again, that in Ontario under regulation 666, all of the searches, before you can issue a policy of insurance, must be done by a lawyer.

The Chair: Mr. McMeekin?

Mr. McMeekin: Thank you again. That's an interesting twist on an old phrase, you know, the prospect of biting the hand that feeds you. We were told earlier that the Attorney General had given assurance that it wasn't his intent to have you regulated under the law society. So I hear you saying, if I can be so bold in the recommendation about the "appeal-to-Caesar clause," I think somebody called it, that that would seem on the surface to be a logical point. I'm just a rural backbencher. What do I know about it?

The other thing I would ask: Is it your position that if it ain't broke, don't fix it, and if it ain't broke, for goodness' sake don't break it? Is that what you're saying?

Mr. Offer: I'd have to get some clarification: What isn't broken and not to fix? Our point with respect to the exemption—and I think Mr. Kormos was alluding to this as well—is that we have companies that provide services which are in competition with what can only be referred to as "our competitor." We believe that the legislation, the purpose and the principles are designed by government. If there is to be any exemption, those who are seeking the exemption should go to government to be granted an exemption, not to "our competitor." It is akin—and I'm going to overly simplify this somewhat—to Wal-Mart asking the permission of Costco to locate on a particular corner. We believe that government ought to retain the duty, the obligation, to exempt those who come before it, ensuring that the purposes of the bill, in whatever final form it happens to be, are met. That's the fundamental basis for our concern.

Mr. McMeekin: Fixing it isn't giving your competitor a monopoly to control its competitors. Fair ball.

Mr. Offer: Right.

The Chair: Mr. Runciman.

Mr. Runciman: That isn't the first time we've heard the Wal-Mart analogy. The paralegals have used it as well. There might be more of an argument in terms of the independence of the law society with respect to paralegals than there is in this situation, given the revelations related to LawPro and the involvement of benchers and others on the board.

I'm just curious, Mr. Offer: Given your background as a former MPP and former cabinet minister, was there any effort to involve you or your company directly, in terms of consultation, in the preparation of this legislation?

Mr. Offer: No, Mr. Kormos, there wasn't. But on that, I would like to say that there was a—

Mr. Runciman: I wear a tie, by the way.

Mr. Offer: Pardon me?

Interjection: That's Mr. Runciman.

Mr. Offer: Oh, I'm sorry, Mr. Runciman.

Notwithstanding my past, I was not sought out. But I would like to say that the Ministry of the Attorney General at many levels—I can only speak for myself—

has been open to meetings and trying to understand exactly what we do in the service we provide, and being caught within the definition was inadvertent. They've been pretty straightforward with us. So although we've not had a hand in any of the consultation piece, they have always been open to listening to our concerns.

Mr. Runciman: Inadvertence is pretty common practice with respect to this government's legislation. We have a bill before another committee today dealing with well over 100 government amendments, so that shows you the kind of consultation and planning that goes into some of the bills we have to deal with.

I gather that the Attorney General, despite his openness to listen to you, has not given you any assurances that the bill will be amended in such a way that it would address your concerns.

Mr. Offer: As a matter of fact, we have been told that although it's inadvertent and it was not designed to capture the type of work we do for our customer base, we of course have to come before committees and we have to indicate to all what our concerns are and the basis for them. So we are going to do what everyone must do. We're going to be leaving it in your able hands to assess what we have said and the fundamental basis of our concern, especially in terms of exempting and the provision of some suggestions as to how that might be fixed.

Mr. Runciman: So your former colleagues have left you twisting in the wind.

Mr. Offer: Thank you very much, Mr. Runciman, and members of the committee. It's always a pleasure.

Mr. Kormos: Chair, if I may, I have another request for Ms. Drent, who sits there with apprehension, and I understand. We've had two presentations today by title insurers. I've already asked her to get us a handle on LawPro. I think it's important that we understand who the title insurers are in Ontario and how their product is sold. We know that it's sold through lawyers, but does every lawyer sell for every company? Are they effectively like insurance brokers? Do they only have relationships with some insurance companies? How do the insurers compete? Are there rate differences? Although there appear to be minimum product standards set by regulation, is that one of the areas of competition? Are lawyers compensated for selling or facilitating in the purchase of a particular bit of title insurance? Then, if there are any data on the new transactions, and Mr. Phillips's ministry may well be able to provide this—there are thousands, of course; Mr. Phillips alluded to that in his press conference—how many are accompanied by title insurance? In other words, what's the frequency of title insurance on titles in our land titles system? Finally, the requirement that I'm sure is in the statute and regs. for reserves.

Ms. Margaret Drent: Reserves?

Mr. Kormos: Reserves. Let me tell you why, Chair and Ms. Drent. Land title insurance appears to protect title to a property for ever and ever. Does that apply—and I presume it does only to that owner who purchased the title insurance. And then how do we protect the

owner? I live in a 95-year-old house and I'm only the second owner on title. So that means we've had people in there for over 50 years, the same owner. How do we ensure that a purchaser of title insurance 55 years down the road is still going to be able to access assets in the context of—I appreciate that failures of insurance companies are few and far between, but there have been some dramatic ones. So what happens to those people?

Ms. Drent: Is there a guaranteed fund?

Mr. Kormos: Yes, within the industry, within the private sector industry. Again, the role of the law society's LawPro: presumably Mr. Offer's company is a profitable company. As you know, I suspect that most insurers are. Is LawPro run on a different basis? What is its style? Is it like a co-op? Is it a co-op type of style? Again, how do its fees vary from the private sector?

My apologies to you. I know this isn't going to come to us tomorrow, but I really think it's important in the context of the concerns that have been raised.

The Chair: Thank you, Mr. Kormos.

Mr. Kormos: Thank you, Chair.

The Chair: Frank DiLena? Not here? Okay. We've got Joseph Colangelo, a person who is on our priority list, who is on his way. I understand he's near here. We'll be breaking for about 10 minutes.

The committee recessed from 1143 to 1205.

The Chair: This committee is called back to order. It doesn't seem like the next presenter will be here in the next little while, so in everybody's interests we'll be breaking for lunch. We'll meet back here at 1:05. Thank you very much.

The committee recessed from 1206 to 1306.

JOSEPH COLANGELO

The Chair: Good afternoon. We're resuming our hearings this afternoon. Our first presenter is Mr. Joseph Colangelo. Good afternoon, sir. You have 20 minutes. You may begin.

Mr. Joseph Colangelo: Mr. Chair, members of the committee, thank you for permitting me this opportunity to appear before you and make submissions. My submissions will be restricted to comments on the amendments to section 116 of the Courts of Justice Act, namely the provision requiring that there be mandatory structured settlements in medical malpractice cases. I've handed out my curriculum vitae and some speaking notes. I hope to leave sufficient time for questions.

Insofar as my personal background is concerned, I hope that I bring some unique perspective to the discussion. As you will see from my background, up until 1999 I was with the firm of McCarthy Tétrault, which largely, in my practice at least, defended physicians. Since that time, I have been in private practice. So my representation of people in medical malpractice cases is now on behalf of injured persons or plaintiffs. So I've seen both sides of the street, so to speak.

I hope to be of some assistance to the committee in their deliberations on the appropriateness of the amend-

ments to section 116. These amendments, in my view, are fraught with problems. The solution to a fair and efficient compensation system for those who have unfortunately suffered as a result of errors in the delivery of health care lies elsewhere. This is not the solution.

The main purpose of the amendment appears to be cost-saving. In my view, that cost saving has not been demonstrated or, at minimum, has not been demonstrated to be substantial. If the amendment is made, in my view, the transaction costs, specifically the legal fees of both injured persons and defence, will increase, because there will be an inevitable debate played out before a judge about the appropriateness of a structured settlement.

Furthermore, the bill does not provide for any accountability for the alleged savings. There is no structure, no mechanism in the bill to demonstrate that if in fact these savings, however modest, are achieved, they will be achieved. If there are cost savings, in my view they will be borne at the expense of the injured parties, and that simply is not fair. In the end, I believe that this will increase court costs, increase the cost of litigation to the parties and, ultimately, to the public.

This amendment, in my view, as a matter of law, is flawed, incomplete and likely unconstitutional. The theory of the amendment is that there is some crisis in the cost of health care litigation. That case has simply not been made out. In fact, according to the CMPA annual reports, the cost of settlements has decreased from about \$153 million in 2001 to \$116 million in 2005. There are other ways in which cost savings can be achieved, more significant savings. The problem with the system right now is that transaction costs, legal fees, are high.

As you know, the CMPA, to the extent of some 90%, is funded by the public. Since 1986, any increase in the annual fees payable by doctors to the CMPA has been borne by the Ministry of Health. So it is the public funding a defence system on behalf of physicians. In essence, the public ensures that the doctors up front have unlimited access to justice, but most members of the public who are injured as a result of medical malpractice have to rely either on paying as they go or they have to rely upon a contingency fee arrangement with the plaintiffs. They do not get up front access to justice. But in the end, historically, over 50% of CMPA's costs are defence costs, the costs of lawyers and expert witnesses. If you assume that the other 50% or more goes to plaintiffs to pay for damages, there is a built-in component to that payment of about 10% to 15% to pay or contribute to the costs of the plaintiff's lawyer. So in the end, you have a system that pays upwards of 65% of every dollar for transaction costs for lawyers, and 35% goes to victims. In my respectful submission, we, as a society that believes in fairness and justice, simply cannot allow that to happen.

The savings, as I read the CMPA submission, are about \$2.7 million annually. If you look at the CMPA annual statements, defence costs have increased by 25%, from \$92 million in 1991 to \$115 million in 2005. Can we be even 10% more efficient in litigation costs? Sure

we can. That's a saving of \$11 million a year just by reason of efficiency in defence costs. But who is monitoring this? We, as the people of Ontario, are paying 90% of the dollars that the CMPA spends on defence costs, but who is monitoring the efficiency in that expenditure? That is where the real savings are to be made.

Unfortunately, in medical malpractice cases, indefensible cases are not being settled promptly. As a profession and as a system trying to ensure fairness, we are not following the wisdom of my profession, which has been around for years, that the sooner you settle a medical malpractice case—or any case that is bad—the better. The significant savings come from early offers, and this has recently been demonstrated in the United States. There is a professor at Harvard who has been researching the Moore-Gephardt amendments to early tort reform. In the United States, early offers, early settlements, have achieved savings of between US\$200,000 and US\$500,000 per case. If you think that only \$50,000 per case would have been saved by early offers, the saving to the CMPA and to this government would have been in the order of \$19 million last year. But it is simply not happening.

The statute, in my respectful view, is likely unconstitutional. It draws a distinction between those who suffer injury or physical or mental disability. Section 15 of the charter enumerates those grounds as inappropriate grounds for discrimination. If you suffer mental or physical disability as a result of medical malpractice, you are treated differently than if you suffer physical injury or mental disability as a result of the injury caused by anybody else. Regardless of whether my argument is correct or not, you can see that there will be a constitutional debate about this, and therefore increased legal fees.

When I heard the submission of Dr. John Gray, the chief executive officer of the CMPA, on this issue, I took him to say that somehow these provisions should be mandatory, because that's how the trend of the law in the past and the comments of the judges on the issue have been going. I disagree. If you look at the decision of the late Chief Justice Dickson in *Andrews and Grand* and *Toy*, and of Justice McLachlin, as she then was, in a case called *Watkins and Olafson*, it's clear that the judges were not asking that they be required to impose a structured settlement; they were asking for the discretion to do it. But the bill has made the structured settlement mandatory. The onus then shifts to the plaintiffs to demonstrate that it's not fair.

I have negotiated and concluded many structured settlements, and I can tell you that the debates and the discussions that go on between the lawyers as to the appropriateness of structured settlements are extensive. What you're now asking is that that discussion and that consultation with bankers, financial people and structured settlement specialists be taken from the lawyer's office and played out in front of the judge. We will spend weeks of court time debating those issues.

Structures do not necessarily save you money. There's one basic principle that all personal injury lawyers adopt:

the lower the interest rate, the less likely that a structure is going to save you any money. Depending on the circumstances of your client—his or her age, the interest rate, the window over which the structure will be funded—a structure may or may not be a good idea. The bill turns everything on its ear and says, "Impose a structure, and then let's have someone"—typically it's going to be the plaintiff—"demonstrate to a judge why it shouldn't happen": more court time, more expense and, in my respectful view, a big waste of time.

These are the ways, in my view, that tort reform in this area should be approached. There has to be a reduction of legal fees, and certainly there must be accountability for the legal fees that we spend. If the Ministry of Health is spending tens of millions of dollars annually to fund medical malpractice costs, the minister must have the power to have the Provincial Auditor review the books at the CMPA. If I were paying those kinds of legal fees on behalf of a third person, I would require the right to have the accounts of the lawyers whose fees I'm paying assessed by an officer of the Superior Court of Justice. It's called taxing the account. In addition, if I were funding an organization to the tune of 90%, simple, basic, good commercial law principles would say, "I want some representation on your board of directors." There are accountability issues here to be addressed before you go any further.

When you talk about tort reform, the Pritchard report has now been around for almost two decades—15 years, more correctly—and nothing has been done about it. We need a system that is more efficient. We need a system where there is an early assessment of these cases by both plaintiffs and defence. I am not here to suggest that the defence is the only one that ought to be participating in efficiency. Plaintiffs have a role too. Early reports from expert witnesses should be obtained and exchanged, and there should be mandatory mediation of these cases as the outset, with both sides presenting their reports at an early stage, with representatives of the CMPA and the doctors attending the mediation.

It will surprise you to know that none of this is happening right now. Reports are not exchanged until 90 days before trial. Typically, on the pre-trial or at a mediation, when we try to work these cases out, a representative of the CMPA is not to be found. They don't attend. That is contrary to common practice in the insurance industry, and I've represented a number of insurers. We can do better. This is simply not enough, and the "not enough" is going to be on the backs of the victims.

Thank you for listening to my submission. I would be more than happy to answer any questions.

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The Chair: We'll start with the government side, a couple of minutes each.

Mrs. Van Bommel: Thank you very much for a very interesting presentation. You certainly bring quite a different perspective to the table.

I note on your presentation in your written document on page 4 you talk about "hybrid action." Could you go

into a bit of detail on that and explain to me what you mean by "hybrid action"?

Mr. Colangelo: Sure. If you look at the text of the amendment, the mandatory structured settlement provisions apply to a medical malpractice action. The statute does not address a situation where a person is perhaps injured in a car accident. The person in the car accident says, "The driver who hit me was negligent," and then he or she comes to hospital and is treated by a health care practitioner and there is super-added negligence. That's the hybrid action. The driver of the car that struck the person will be sued, plus the health care practitioner: the hybrid action.

The legislation just simply does not address what happens there, because unless you make structured settlements applicable to all injured people, regardless of who injures them—a doctor or otherwise—in a hybrid action, a judge is going to be left with saying, "I have to impose a structured settlement with respect to the medical malpractice piece, but I'm back to the old common law with respect to the driver who hit him. What do I do?" There's no answer to that in the legislation.

Technically, what is likely to happen is that creative members of the bar, in order to get around this section, are simply going to find some non-health-care practitioner to sue, in order to make it a hybrid action and take it out of section 116.1.

That doesn't make any sense. That's just going to add to the complexity of the legal issues. The legislation does not address the hybrid action.

Mr. Runciman: I enjoyed hearing from you. I missed last week's hearing so I missed the testimony you referenced. Mr. Kormos will have some response to some of that.

One thing strikes me with respect to structured payments: In mandating structured payments, isn't there an inherent commentary with respect to victims, the competence of victims to be involved, in terms of how this should be settled? Isn't this supreme arrogance in terms of the suggestion that we're the people who can determine what's appropriate for you in the sense of how you should receive compensation for the injuries you've received as a result of malpractice? It just strikes me as supreme arrogance to be telling victims that this is the way it's going to be.

Mr. Colangelo: It raises a very interesting point about lack of flexibility. There is insufficient flexibility in the statute in order to tailor the remedy in a structured settlement to the specific requirements of a victim. I believe that most of our judges would be concerned about two things: one, that their hands are tied; and two, that they don't have that flexibility. Plus, if you look at the reasons for the decision of Justice Dickson in *Andrews and Grand* and *Toy* and of Justice McLachlin in *Watkins and Olafson*, one of the things they were talking about was the fact that structured settlements are inherently complex. Although they'd like the liberty, but not the requirement to consider them, the one aspect of tort reform which this does not pick up is periodic review of judgments.

I've represented clients in family law cases. As you may know, payments under the family law regime can be altered and amended, depending on change of circumstances. In those two cases, Chief Justice Dickson and Justice McLachlin, as she then was, there's a cry out for the periodic review of judgments. I must tell you that for infants, this is terribly unfair.

I've represented children three, four and five years of age, and I have to start the trial by looking the judge square in the eye and saying, "Look. You've got one chance to get it right, once and for all, and you'd better get it right, because I can't come back."

Mr. Runciman: A glaring weakness; I agree with you. You talk about 90% of legal costs for the CMPA being carried by taxpayers, so you could explain to me—

The Chair: Very quickly, Mr. Runciman.

Mr. Runciman: —medical malpractice insurance, which physicians carry, and I guess there is some subsidization by the taxpayers with respect to that. This is a different kettle of fish that we're talking about, so in essence, we're not only subsidizing as taxpayers the insurance coverage but also—is this a different horse that we're talking about?

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: Go ahead.

Mr. Colangelo: The taxpayers fund 90% of the premiums that the doctors pay to the CMPA. Of that money, 65% of that pot represents legal fees, more or less. If you look at OHIP bulletin 4431 and bulletin 4414, you'll see what the contribution of the public to the CMPA pot is.

Mr. Kormos: Incredible. Thank you very much. This schedule has received nowhere near enough attention. I am grateful for your being here. We were, very regrettably, led down a garden pathway by spokespeople for the CMPA. They, quite frankly, misrepresented what Osborne said, what McLachlin and Dickson said, and Ms. Drent. I should have remembered Osborne, because of course that was the Osborne report that reared its head during the insurance wars in 1988 and what prompted the Liberals to implement no-fault insurance, and that was such a wonderful benefit to innocent accident victims.

"The court shall": Would you prefer that was "may" or would you prefer that it was "shall, at the request of the plaintiff," but not necessarily "shall, at the request of the defendant"?

Mr. Colangelo: It should be "may" in order to make it fair, but you're still going to have the problem with its constitutionality.

Mr. Kormos: Sure. Now the other thing. We remember Mr. Kolody, the father of a very young kid apparently who's the plaintiff in litigation in Ottawa area—that's all we know; it's all we should know—who made a very articulate presentation about what protection from inflation means, because it's not defined here: whether it means inflation and its variations or whether it means the CPI. Is that of concern to you?

Mr. Colangelo: It certainly is. It's a concern, because in the negotiation of a structure, you can, in a pre-negotiation, bargain for indexing. But if that is removed

and the judge imposes a structure, and if he or she gets it wrong, you're locked in.

The Chair: Thank you, Mr. Colangelo.

Mr. Kormos: This schedule has no business being in this bill.

Mr. Colangelo: If I might leave a copy of bulletins 4431 and 4414 with the clerk of the committee, it might be a useful resource for him.

The Chair: Do you have copies there?

Mr. Colangelo: Yes.

The Chair: Sure.

Mr. Colangelo: Mr. Chair, members of the committee, thank you very much. I appreciate it.

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COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

The Chair: The next group is the County and District Law Presidents' Association. Good afternoon. You may begin. You have 30 minutes, and if you could identify yourselves for Hansard before you start, that would be just great.

Mr. Ormond Murphy: Thank you, Mr. Chair, and thank you to the committee for hearing our presentation. We are here representing the County and District Law Presidents' Association. My name is Ormond Murphy and I'm chair of that group. With me is Randall Bocock, who is second vice-chair and also chair of our paralegal committee. We've come today to address only the issue with respect to the paralegal legislation.

Firstly, to explain to the committee who the County and District Law Presidents' Association is, we represent the 46 county law associations. So throughout the province, each county has a law association. There are 46 of them outside, 47 in total including Toronto. You've already heard from the Toronto Lawyers Association; we represent the other 46 counties. Outside of Toronto, it is typical that most practising lawyers are members of their county law association. Therefore, we represent the practising bar outside of Toronto.

The issue of paralegals is not one that's been limited just to Toronto or outside of Toronto—it's a provincial problem—but it's of particular concern to us outside of Toronto and therefore it's been a major focus for my association for the last 25 years.

Why is it that we are concerned by paralegals? Well, there are a number of answers to that, but the first one I will tell you is that it's because when there's a problem, when the mess gets created, who cleans it up? It's always the lawyers who end up cleaning it up, and the fact is that that costs the public money. The public doesn't always differentiate between a paralegal who has charged them to do something which they haven't done properly. Consequently, when the mess gets sorted out, it's the lawyer who has to do it, at cost to the public, and we end up wearing the bad name even though it's not our fault.

As I said, there are a number of reasons why we feel that if other professionals are going to deliver legal

services, they should do so competently, but this is a matter that's been pressing. It's a significant issue in some of our smaller towns where indeed paralegals are significant in terms of practice. It's not something, in my respectful submission, that has been, over time, properly addressed. The fact of the matter is that these individuals are essentially practising law without a licence. That situation, that status quo, can simply not be allowed to continue.

My friend Mr. Bocock has prepared the written brief. He is much more familiar with the exact wording of the text of the bill, so I'm going to ask him to make the presentation with respect to our particular issues.

Mr. Randall Bocock: As Ormond has indicated, my name is Randall Bocock and I'm the second vice-chair of the County and District Law Presidents' Association. For the past three years, I've been the chair of the County and District Law Presidents' Association paralegal committee.

In terms of our group, we meet twice annually in plenary, which is to say that every president who is the president of a law association across the province of Ontario meets in session over a two-day period. We call that a plenary session. The County and District Law Presidents' Association has studied the very issue of paralegal regulation for 25 years, I might add, but in terms of the present impetus and Bill 14, schedule C, in relation thereto, the entire County and District Law Presidents' Association has dedicated a full session at each of its last six plenaries over the last three years on the topic of this schedule to Bill 14.

In short, the County and District Law Presidents' Association has conducted a fulsome review of the issues, a detailed deliberation of schedule C to Bill 14 and, in substance, heartily supports the proposed legislation and urges its speedy passage, subject to the outcome, of course, of these committee hearings and the will of the Legislature.

The inclusion of the definition of "legal services," the delineation of those practising law and those providing legal services, the proposed governance structure, proposed guidelines for licensing, discipline, practice standards, continuing education and, quite importantly, mandatory errors and omissions insurance ensure that the legislation will work once passed. It will work, subject to two outstanding matters which must be addressed post-passage.

The first is the allocation of appropriate seed capital to the establishment of the additional infrastructure which will be necessary for the regulation of legal service providers, commonly known previously as paralegals; and secondly, the speedy development by the Law Society of Upper Canada of the scope of activities in respect of which legal service providers may practise or which they may engage in.

In CDLPA's view, and I gather in the present view of the law society, the areas of legal service for the purposes of those licensed to provide legal services should be limited to, firstly, Small Claims Court, where there is no

permanent waiver of general damages for personal injury; secondly, provincial offences court, where there is no long-term prospect of incarceration; thirdly, tribunals, agencies and commissions which permit representation by agents presently; and lastly, other bodies which presently permit legal agents to appear.

Notably, non-advocacy roles such as the preparation and drafting of instruments, contracts, documents, wills, separation agreements, powers of attorney and the like should not be permitted for legal service providers. Errors in these areas, as mentioned by my colleague Orm Murphy, are discoverable much later in time, are not generally susceptible to remedial court orders for rectification, and result in irreparable and irrevocable harm where errors do occur.

Finally, the drafting decision of the drafters not to utilize the term "paralegal" and provide a definition for that term is, we in the County and District Law Presidents' Association believe, both forward thinking and laudable. The licensing of legal service providers will be task-specific and so the use of the term "paralegal" would borrow from what we view to be injured and past terminology and mislead members of the public away from the limited scope of the licensing regime proposed under the legislation. It may in fact likely lead to the notion in the minds of the public of an additional professional designation and a new order of professionals, which is clearly not within the intent of the legislation nor, frankly, needed for the purposes of a regime of regulation.

The balance of the County and District Law Presidents' Association's comments, which I will spare you, is included in our submitted material, which is a summary of our presentation today. I would simply say finally that I would like to thank you for the opportunity to appear both on behalf of myself and Ormond to speak to you today. We would be prepared to answer any questions you might have in respect of this. I would reiterate that the County and District Law Presidents' Association, which represents the member lawyers across the province of Ontario of those local law associations, supports the broad public interest and goals of Bill 14, specifically schedule C thereto, and encourages its speedy passage.

The Chair: We'll start with the official opposition; seven minutes each.

Mr. Runciman: Thanks for your contribution here today. I am curious, though, given the scope of this legislation—the Attorney General opted to throw everything but the kitchen sink into this in terms of court administration and other changes to the Law Society Act, the Justices of the Peace Act, the Limitations Act, the POA. There's a whole range of areas that I would think would be of some interest to the county and district law associations.

To me, it sends out the wrong message. We've heard a lot of concerns over the course of the hearing process about the approach of the legal profession to this legislation and it's all been focused on paralegals. There are so many other impacts here of significance, which I

know Mr. Kormos and I certainly have an interest in and concern about. I'm just really baffled by the fact that virtually every lawyer appearing before us is talking about what could be construed by some as self-interest. I'm wondering why in the world you don't have any commentary on any other element or impact of this legislation other than paralegals.

Mr. Murphy: Firstly, I don't think, in terms of being an association that represents lawyers—from your perspective, Mr. Runciman, I can certainly see that there would be other issues that have ramifications to the public. Remember, our constituency here and the people I represent are practising lawyers primarily outside the city of Toronto. In terms of the issues that have come up before us in Bill 14, the paralegal issue is the one that's been paramount in our concern. That's why we have addressed it. Other associations, who are more focused in on specific issues like the previous presentation that you heard, may have their own distinct feature, but certainly our association considers this aspect, schedule C of the bill, to be paramount in our consideration.

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Mr. Runciman: This is not a criticism; I guess virtually everyone who has appeared has a self-interest in the sense of the protection of their own organizations or businesses and the impacts, negative or otherwise, this might have. I'm looking at the bigger picture, where I think there's a role here to play for your profession in offering members of the Legislature input and advice with respect to this whole range of dramatic changes, in some respects, that the Attorney General and this government are putting before us.

As I say, it's passing strange and it raises doubts about some of the other positions taken. I'm not surprised by what you've submitted here. We've heard this from a number of other organizations and certainly we'll be taking it into consideration as we go forward. So thanks again for being here.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, gentlemen. I share a great deal of Mr. Runciman's concerns. That's why you heard me express gratitude to Mr. Colangelo, who was here just a few minutes ago, talking about section 116, a very serious matter, yet there's a paucity of interest in it from members of the bar. That's where it's got to come from because the general public doesn't know about this kind of stuff unless you're like M. Kolody, who's personally and tragically involved because he's a parent of an innocent victim; similarly with the Limitations Act amendments; similarly with the amendments that have the capacity to seriously change how evidence is given in provincial offences proceedings. So there we are.

I heard you when you said that lawyers clean up the mess, the basket cases that come into your office. The problem is, lawyers only clean them up if there's enough money left in the bank account to fund the cleaning up of the mess. Look, operating a law office is an expensive proposition: the overhead, the ongoing education, the report services alone if you're going to keep on top of the

law, especially presumably in your own narrow area. You have the same problem with cleaning up messes that lawyers make: the basket cases, huh?

Mr. Murphy: The difference is, of course, that there's a compensation fund. There is insurance for lawyers. When the paralegal does it, at the present time there's no compensation fund. There is no insurance.

Mr. Kormos: All right, sir, but when a constituent comes into my office with a matrimonial matter and he or she has gone through one, two or three lawyers and shows me accounts for \$20,000 and \$30,000, and you haven't even got the bare bones of an interim interim order when it comes to things like custody and support, there's no money left, and the last lawyer filed his or her—what's the notice you file with the court to be removed as solicitor of record?

Mr. Murphy: That's right.

Mr. Kormos: You know what I'm talking about. That's what I'm talking about. There's no claim to the law society because the law society is most notably not in the business of protecting people from the lawyer who very scrupulously drains an account, and that's one of the tragedies.

I hear you, but let's not—

Mr. Murphy: Can I respond to that?

Mr. Kormos: Sure.

Mr. Murphy: I'd like to respond to it because what we're talking about here is creating a system for paralegals which already exists for lawyers. To pick up on your point about two or three lawyers who have billed \$20,000 or \$30,000 and the barest order hasn't been done, it seems to me that there wouldn't have been a lot of value added to that file, that there wouldn't have been a lot of constructive work done on that file. That's the point you're making. That's the legitimate point that your constituent would be making. Having said that, the law society—and I'm not here to defend the law society—does have a bureaucracy, once a complaint is lodged, to deal with those issues. It may be that the assessment of the account is what is required. But at least there's a phone number. At least there's some place they can go and your constituent can get some assistance—

Mr. Kormos: And we all agree with you. Paralegals should be regulated.

Mr. Murphy: Thank you, sir. That's what we're here to say. Can I make one other comment?

Mr. Kormos: Of course.

Mr. Murphy: You talked about why we're not here dealing with all sections or all parts. The County and District Law Presidents' Association, as I mentioned earlier, is dealing with a practising bar. Our association is concerned with things like courthouses and proper facilities, courthouse security and proper minimum standards, matters that you may have seen in the press recently. Yesterday I was interviewed on CBC News-world for the failure of the federal government to appoint judges. We are dealing with nuts-and-bolts issues of the practice. So in terms of looking at the more esoteric issues in other aspects of the bill, that's not something this association is dealing with.

Mr. Kormos: And you're bang on. As a lawyer, you'd never recommend to a client to sign a contract that said, "Trust me, the details are going to follow." That's exactly what paralegals are being asked to sign on to: "Trust me, the details will follow," in terms of scope of practice, in terms of standards, in terms of who's eligible, in terms of the cost of belonging. Lord, do you understand the concern that paralegals have? I agree, everybody here agrees, about regulation. I'm not even dismissing out of hand the capacity of the law society to regulate. But it's one of those "Trust me" situations. You'd never tell a client to sign a contract that said, "Trust me. We'll work out the details later," would you?

Mr. Murphy: I'm sure, Mr. Kormos, you're aware that there were extensive negotiations between members from my group and the paralegals in terms of trying to find a cohesive group of paralegals to deal with some of those issues, and that negotiation didn't occur.

Mr. Kormos: That's quite right. We're still dealing with a bill that says, "Trust me." The bill doesn't spell out the scope of practice. The bill doesn't spell out the standards. The bill doesn't spell out what paralegals can expect to pay by way of fees. The bill doesn't even provide for membership of paralegals in the body that's going to be regulating them, like lawyers have. That's one of my very serious concerns. You don't share it.

Mr. Murphy: No, from my end, I don't share it.

Mr. Kormos: Fair enough.

The Chair: Thank you. Mrs. Van Bommel.

Mrs. Van Bommel: Thank you for your presentation. I just want to dwell on the fact that you are the County and District Law Presidents' Association, so I'm going to assume that a large number of your membership practise in rural and northern Ontario.

Mr. Murphy: In fact, all of them.

Mrs. Van Bommel: Okay. My experience in that situation, having a very rural riding, is that very often lawyers do not have a full-time practice in one community. They may do Mondays, Wednesdays and Fridays in one community and Tuesdays, Thursdays somewhere else, or Friday afternoons. The assumption is that there's ample opportunity and need for paralegals to be available in these communities. I'm just trying to get a handle on how many paralegals you would see in the northern and rural communities. Do you have any idea?

Mr. Murphy: No, and I don't think anybody knows, because in fact they're not identified as a profession. There's no way in which anybody keeps statistics on it. When we were originally involved in this—I think the best assumption is that there were something in the neighbourhood of 1,000 advocacy paralegals who are practising in the province. When I say "advocacy," I'm talking about the people you see on television: XCopper and POINTTS and those sorts of people. Then for the non-advocacy ones, the ones who are doing wills, real estate transactions, incorporations, and divorces, family law and so forth, I think the sense is that there are probably another 1,000 or so of those people as well.

Mrs. Van Bommel: This morning we had here the president of the PSO, the Paralegal Society of Ontario. I

asked her about the number of members. Would you be able to identify, in your jurisdictions, the number of paralegals who would belong to the paralegal society?

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Mr. Murphy: I have no idea of the numbers. The problem is that when you're talking about the PSO, there are, as you may know, a number of paralegals who practise who don't belong to any of the associations. So there's that group that are unnumbered. Then there are a number of associations that represent them as well. As a consequence, it's a pretty divergent group. It's not something that we have a handle on.

In my role I travel across the province and speak to the county law associations. Last weekend I was in Fort Frances and Kenora, and issues of incompetent paralegals—if they were doing a good job, no one would complain about them. It's the incompetent ones I hear about. Those are the people the bar wants something done about, and I can tell you that those people are in fact practising law in a fashion in those towns.

The Chair: Thank you, gentlemen, for your presentation.

INTELLECTUAL PROPERTY INSTITUTE OF CANADA

The Chair: The next group is the Intellectual Property Institute of Canada.

Mr. Kormos: Chair, while these people are seating themselves, we've been provided with the report prepared by Philip Kaye, research officer, indicating that lawyers, process servers, private investigators and security guards can access MOT records in terms of using a licence plate number to get the identity and address of the owner of the car. I would appreciate some expansion on that.

The issue is within the context of municipalities looking for this information for, let's say, enforcement of parking tickets, amongst other things. Is there a fee charged? Is the fee variable? How, if at all, is there access to these by border officials? In other words, when Ontarians travel to the United States at Buffalo and Fort Erie, do American authorities have access to our MOT records such that they can input the licence plate number and get information about the owner of the vehicle?

Similarly, and I appreciate that that may well not be provincial jurisdiction, how do they access CPIC-type information, police records? Do they get the full CPIC, which is not just records of convictions but also any amount of highly editorial information? What fees are charged to them for that service?

Ms. Drent: For CPIC?

Mr. Kormos: Yes, for CPIC; just a little add-on to make legislative research's life more interesting. Thank you kindly.

The Chair: Thank you very much.

Good afternoon. You may begin your presentation. You have 30 minutes.

Ms. Cynthia Rowden: I'd like to start by thanking the chairman and members of the committee for giving us the opportunity to appear before you today. I am representing the Intellectual Property Institute of Canada, and I will occasionally use our acronym, IPIC. Just to summarize our submission, we believe that the proposed bill, the Access to Justice Act, ought to be specifically amended to exclude from the protection of the act right now the activities of patent and trademark agents.

I'd like to begin by introducing myself. My name is Cynthia Rowden. I am the president of the Canadian intellectual property institute. I'm a lawyer practising with an intellectual property law firm here in Toronto. To my left is Joan Van Zant, who is a patent agent, not a lawyer, and a senior partner in a national law firm; the national vice-chair of IP, intellectual property, for that firm; and a former president of our organization. To my far left is Michael Erdle, who is currently our vice-president. He is a lawyer practising with a Toronto firm as well. To my right is Michel Gérin, who is our executive director.

IPIC is a national professional association of patent agents, trademark agents, lawyers and others, including IP managers and administrators who work in law firms, agent firms, companies, universities, hospitals and the government. A majority of our members both work and reside in Ontario. Our members protect intellectual property assets. Those assets include patents, trademarks, copyright, trade secrets and industrial designs. By statute, all IP rights are areas of exclusive federal concern.

What do agents do? We work with companies and individuals in Ontario, in Canada and nationally to develop and protect IP rights. Our clients include those involved in manufacturing technology, drugs and medicine, software, entertainment, food and beverage manufacturing of all types, agriculture, hospitals and universities. Some of Ontario's biggest customers are our clients: RIM, Sick Kids, Husky, Magna, all Ontario universities, Ontario hospitals, the Toronto Stock Exchange and Nortel, just to give you a very short example of the list.

Mr. Kormos: Nortel?

Ms. Rowden: Yes. Part of our job is to educate people about intellectual property rights and the importance of filing patents and trademarks in Canada and elsewhere.

Patent and trademark agents prepare and file patent and trademark and copyright and design applications with the appropriate federal IP offices. They liaise with colleagues in other countries to obtain foreign IP rights. We act for our Canadian clients to obtain foreign IP rights. We appear before appropriate federal tribunals in the patent office, the trademarks office, the registrar of designs and specifically the Canadian Intellectual Property Office. We draft documents and evidence relating to matters before the respective IP offices. And we draft and file assignment documents and other transfers.

Unlike others who may have appeared before you today, I am a lawyer who is going to take the position that the bill has gone too far with respect to the applicability or the definition of "providing legal services."

Our comments on Bill 14 are set out in detail in the written submissions which we have already filed and which I believe you have copies of today.

We have seven points, and a couple of those we want to address in a little bit more detail today. To review, our issues with the bill are as follows:

First, there was never any discussion at any level about the need to regulate patent and trademark agents. However, to regulate paralegals, a very broad definition of "providing legal services" was drafted. The definition is clearly broad enough to cover the regular activities of patent agents and trademark agents.

Agents are already fully regulated by the federal government. The Ontario government did not consult in advance with our organization or the federal government regarding the implications of this bill. In fact, it was our organization that informed the federal government of this issue. We understand that the Commissioner of Patents, Registrar of Trade-Marks and CEO of the Canadian Intellectual Property Office has written to the Deputy Attorney General. As of yesterday, I understand that no response had been filed.

It is our submission that the field of regulation of agents is entirely occupied by the federal government, and it is not only unconstitutional for the province to propose additional regulatory requirements for agents, but it is also unnecessary for any additional requirements to be imposed.

To give you some background, agents are now a highly educated and trained group of professionals who, both by practice and law, are fully regulated. In our firms, agents are treated as professionals. They are not treated as paralegals. Most patent agents have educational backgrounds—often at the graduate and post-graduate level—in a specific field of science or engineering.

Both the Patent Act and the Trade-marks Act and regulations set out minimum periods of training, which must take place under the supervision of a registered patent or trademark agent. This training period applies for both lawyers and non-lawyers who seek to become registered patent or trademark agents. In fact, the training program set out in the acts is longer than the articling period currently enforced by the law society for lawyers.

Following that period of supervision, all patent agent trainees, including lawyer agent trainees and all non-lawyer trademark agent trainees, must also write qualifying examinations. All agents will attest to the thoroughness, complexity and difficulty of these examinations. The exams are set jointly by the federal government and our organization, administered by the federal government and jointly marked by employees of the patent and trademark office and our organization.

Once the exams are passed, the names of agents are entered on the register, which is maintained by the federal government. The register can be accessed by the public, who can obtain a list of registered patent and trademark agents and firms with registered agents. Registration must be renewed and appropriate renewal

fees paid annually to the federal government. IPIC offers a group insurance program for errors and omissions insurance to agents.

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The federal government has the right to, and does occasionally, remove agents from the register for improper conduct.

Our organization offers multiple continuing education programs, some of which have been accredited by the Law Society of Upper Canada and the New York law society's board of continuing education.

This is a complete scheme for the regulation of agents. It is enacted in the Patent Act and the Trademarks Act. Only the federal government has competency over patent and trademark matters in Canada.

Because of existing federal regulation, any provisions in the bill regarding agents would appear to be ultra vires and thus ineffective. The Ontario government cannot enact a competing regulatory scheme in the face of an existing federal regulatory scheme. However, certainty and clarity require specific exclusionary language for agents. This will not only protect agents by avoiding any doubt as to the intent of the legislation, but it is necessary to protect the validity of the legislation for others.

The government must, of course, be well aware of the Mangat decision that went to the Supreme Court of Canada involving the British Columbia law society's attempt to regulate paralegals. In that decision, the Supreme Court of Canada noted that representation by non-lawyers and specifically patent agents before the federal tribunals was within the federal government's competency, and recognized both the expertise of certain groups other than lawyers and also the legislative intent to permit increased access to these tribunals by non-lawyers.

Currently, the bill, on its face, specifically refers to persons acting as an agent under an act of Parliament. Thus, there is a plain constitutional issue posed by the bill. To reduce the impact of clearly ultra vires legislation, which could easily have an impact on the whole bill and not just its applicability to registered patent and trademark agents, a specific exclusion is required.

Any doubt about the impact of the legislation being harmful to agents, their employees and their clients must be resolved now. Should the bill ever be interpreted to apply to agents, there would obviously be additional educational and exam requirements, additional licensing and insurance fees—requirements not present in any other province—and also an attempt to have a law society regulate patent and trademark agents. No other country has ever tried to do that.

Ontario agents already compete for work with agents in other provinces and very often agents in the United States. Any steps that will make it more difficult or expensive to hire and retain agents will shift work out of Ontario. This will also create a barrier to entry for registered patent and trademark agents in other provinces who may wish to move to Ontario.

The protection of innovation is very important to Ontario's economy. It is our view that this will discour-

age the growth of a professional group whose existence is fundamental to the protection of innovation in Ontario. It will result in increased costs to companies in Ontario and it will in all likelihood result in companies deciding to forgo intellectual property protection in Ontario. In our view, this could very well have a dampening impact on innovation in Ontario.

It is clear, particularly from the last speaker, that there will be additional regulatory requirements and additional costs associated with paralegal regulation. These administrative costs will no doubt be passed on to those seeking intellectual property protection in Canada, if not merely general taxpayers. That is completely unnecessary for registered patent and trademark agents, who already have a full regulatory scheme in place.

We do not want exclusion to be handled in any way that is not clear, readily apparent or subject to change without proper notice or consultation. For that reason, it is our strong recommendation that an exclusion that might be proposed by a bylaw of the law society is not satisfactory.

The law society clearly has experience dealing with paralegals. They've been involved for years with paralegal training and consultation. They have been concerned with the activities of paralegals for decades, and they are also concerned about how the activities of paralegals overlap with those of lawyers. This does not apply to registered patent and trademark agents. The law society has no history of dealing with the consulting, training, supervision or regulation of patent and trademark agents. That role is entirely occupied by the federal government.

Our members are justifiably concerned about the impact of the benchers of the law society making decisions or exemptions in the absence of any history or background with our group. For that reason, we want to ensure that there is a specific statutory exception. We do not want this issue to be dealt with in the convocation of the law society.

I am a lawyer. Michael Erdle is a lawyer. We clearly respect the law society, but we know very well that its activities are not subject to the same level of review, public consultation and scrutiny that an amendment to a bill would be. Our members are justifiably concerned that bylaw exemptions are not guaranteed and may not be permanent. Clarity, certainty and respect for the Constitution require an exemption.

Those are our submissions. Thank you very much.

The Vice-Chair: Thank you very much. We have about 18 minutes left for questions and comments. I will start with Mr. Kormos.

Mr. Kormos: Thank you very much. I agree. Your comments are similar to so many comments made by other people who have been caught in this huge net that's been cast out there. I also agree that it's bad form to have this broad shotgun approach and then say, "But for the people listed in the exemptions," especially when it's not even the Legislature making the exemptions. It's delegated to a body over which there's no direct control. That's the nature of that beast.

Have you thought about a definition of "paralegal" that would inherently exclude parties regulated otherwise within their professions by federal or provincial bodies? We've got social workers coming here this afternoon at some point. I don't know what they're going to say, but I'm anticipating they're going to say, "We shouldn't be covered because we have a college of social workers that regulates our members' conduct and does all the things that this type of regulatory scheme does." Have you thought about what type of amendment would come into the bill, rather than just saying, "And by the way, patent agents are excluded" because that's going to be a long appendix, isn't it?

Ms. Rowden: If you're not prepared to have a specific exclusion for registered patent and trademark agents, it strikes us that it would be easy to exclude professionals who are already regulated by another legislative authority, i.e. the Parliament of Canada. That would specifically avoid the constitutional issues and would also clearly encompass the activities of registered patent and trademark agents.

Mr. Kormos: Ms. Drent is right now working on some research in response to the bankers who were here. We noted that they, of course, are federally regulated. There are loans officers who would be giving legal advice pursuant to Bill 14. Can they be the subject matter of provincial legislation, provincial regulation, since it's a federally regulated industry? Similarly, immigration consultants, where, in a peculiar sort of way, CSIC, created by the federal government, purports to regulate them, but it's a voluntary membership. So that makes it a little more difficult. What do you think?

Ms. Rowden: I think there are a number of federal organizations. The actuaries would apply as well.

Mr. Kormos: The actuaries were here, yes. A very exciting presentation.

Ms. Rowden: I think it may be difficult to do it by way of a definition. I think our preference would be by way of specific language, identifying the groups that you intend to exclude. For our purposes, an exclusion that covers either registered patent and trademark agents specifically or professionals who are already fully regulated by the federal government would apply. That would clearly cover our organization right now.

Mr. Kormos: Ms. Drent, I haven't seen the judgment referred to that came out of BC. We're going to get it?

Ms. Drent: Yes.

Mr. Kormos: Thank you kindly.

The Vice-Chair: The government side?

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Mr. McMeekin: Thanks very much for your presentation. Picking up on a point that my good friend and esteemed colleague Mr. Kormos made about a definition, you should know, if you don't already know, that several groups have come already and made presentations suggesting that professions that are otherwise regulated under a federal or provincial statute or relating directly or even indirectly to either of the two senior levels of government as legislative apparatus be exempted. Your

presentation is entirely in keeping with that evolving generic thrust we're hearing. I think every second presenter is making a similar kind of point, and I think the message is getting through. Several groups have referenced that, out of their concern, they contacted the law society to get a statement about their perceived intention about granting an exemption or not following through. Have you had any contact directly with the law society?

Ms. Rowden: We've met with the law society and we indicated our concerns both with respect to the existing regulatory scheme and the constitutional issues. At that time, they advised us that this was the government's legislation and that it was the government that we had to make our submissions to. We have not received anything from the law society in writing or otherwise indicating that they do not intend to regulate patent and trademark agents

Mr. McMeekin: Given that response, if I were in your shoes, my antenna would be going up, because they've written letters to some groups saying that it's specifically their intention not to regulate. So if you're not getting that kind of response, maybe you should continue to have some dialogue with them, because they have in fact responded in a quite different way with a number of groups.

Ms. Rowden: Actually, we're waiting to hear back from the law society on a number of issues.

The Vice-Chair: Thank you very much. I would like to express my appreciation for your coming.

CANADA COURT WATCH

The Vice-Chair: At this time I want to call forward Canada Court Watch, Vernon Beck, please. Welcome, Mr. Beck. You have 30 minutes for your presentation. If you don't use up the entire 30 minutes, the remaining time will be an opportunity for committee members to ask questions or make comments. Would you identify yourself for Hansard and then just proceed with your presentation.

Mr. Vernon Beck: On behalf of Canada Court Watch, I would like to thank the committee for the opportunity to make a short presentation here today. My name is Vernon Beck. I'm a justice advocate, an investigative reporter with the National Association for Public and Private Accountability and the Canada Court Watch program. We are a Canadian-based citizens' organization which was founded by Archbishop Dorian A. Baxter.

For those who don't know our founder, he was the first Canadian who successfully sued a children's aid agency and won. His case made newspapers worldwide because the Durham Children's Aid Society in that case was found guilty of the grossest negligence, incompetence, perjury and blackmail. Unfortunately, there was a recent CBC investigative report on TV in which the same Durham Children's Aid Society was reported on for a young boy who was being sexually abused and drugged while under the care of the Durham Children's Aid Society. Sadly, it seems that history repeats itself when it

comes to children being abused by some of these CAS agencies in Ontario.

One of our organization's major initiatives is the Canada Court Watch program. We are the only citizen-based program that is devoted exclusively to monitoring the courts and reporting on issues relevant to the courts and the justice system. We are the only media organization that collects videotaped interviews of children and adults who have been in the court system for the purposes of research. We strive to make the justice system better by exposing the violations of the rights and freedoms of Canadians in the court system. We strive to make judges and those associated with the court system accountable. More information about our organization can be found on our organization's website at www.canadacourtwatch.com.

Based on our organization's experience over the last 10 years, the justice system as it currently stands here in Ontario has lost the respect of a great many Canadians, especially in our family and child protection courts. Every day our organization receives calls from children and parents in distress with the justice system in the Ontario courts. Many children call us. Many of them complain about Ontario's Office of the Children's Lawyer and how nobody is listening to their wishes and preferences. We have videotaped interviews from some children who are telling us that they are being coerced and coached by lawyers from Ontario's Office of the Children's Lawyer. We have this on videotape. We even get calls from lawyers—

The Vice-Chair: Excuse me, sir. I think at this point I should caution you. While members enjoy parliamentary privileges and a certain protection pursuant to the Legislative Assembly Act, it is unclear whether or not these privileges and protections extend to witnesses who appear before committees. For example, it may very well be that the testimony you have given or are about to give could be used against you in a legal proceeding. So I want to caution you to take this into consideration as you make your comments.

Mr. Beck: I understand, and I will only state that—

Mr. Kormos: On a point of order, Madam Chair: Talk about giving legal advice. Look, he's here, has lawful standing in front of the committee, and quite frankly that sort of admonition—I mean, he comes here at his own risk, but that type of admonition is, in my view, entirely inappropriate for the Chair to give unilaterally. I'm sorry; I find that very bizarre.

The Vice-Chair: I simply want to caution the witness for his own protection.

Mr. Beck: Thank you, Chair. I understand. Let me only state that as far as any statements I make here, we generally do have the videotaped or audio-taped evidence to back up what I probably will say today.

The Vice-Chair: Thank you for that.

Mr. Beck: To continue on, we get calls from lawyers as well with valid complaints about the administration of our courts and about the judges themselves. Many lawyers are telling us that the system is horribly broken. Our

own investigations confirm this. As a volunteer organization, we cannot handle the dozens of calls that come into our organization each week. We are planning to submit a more comprehensive report to the government at some point in the future after a number of our ongoing investigations are complete.

Although the problems with the justice system are just too numerous to deal with today, there are two or three issues that I would like to bring to the attention of this committee because we believe that they can be addressed immediately and they are of utmost urgency.

The first issue I'm going to talk about today is what we feel is the obstruction of justice by judges and court officials regarding the use of recording equipment under section 136 of the Courts of Justice Act. The second issue is the access of the media to the courts.

Court Watch is gravely concerned about what a growing number of citizens see as a blatant obstruction of justice by some judges and court security staff under section 136 of the Courts of Justice Act. Section 136 of the act—and I think there's been some testimony previously—clearly gives citizens, lawyers and parties acting in person the right to take a recording device into the court for the purpose of supplementing their notes in their own court hearing. It's quite clear. The current law makes sense. It's reasonable, it's fair and it complies with the principles of fundamental justice. Yet this simple section of the Courts of Justice Act is being routinely violated by judges and court staff, who have been entrusted to uphold the law and to protect the rights of the citizens of Ontario.

To give you some examples of what I'm describing here right now, last summer at the Collingwood court, Madam Justice Lydia Olah ordered police to padlock the courtroom doors. A lock and key were used to padlock the people inside, and members of the media were told that they had to stay out by the police officers. There was no court order for that decision. Two armed OPP officers stood outside the court doors and said that if any members of the media approached the courtroom door, they would be arrested and taken away.

In that case there, Madam Justice Olah abused her power as a judge because she directly instructed the police to interfere with the law. Police are supposed to be acting on the Criminal Code or under the specific instructions of a court order, not taking instructions from a judge in the backroom of the court. Officers are supposed to get their instructions from the chief of police, not from a judge.

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Prior to that incident, Justice Olah did the same thing again at the Newmarket court. She ordered the media out of the court and threatened them with arrest without giving the media even the opportunity to argue their position in the court. They were threatened with arrest if they didn't get out. This abuse of power is clearly the actions of a tyrant.

Just recently, Justice Waldman, at the court at 47 Sheppard Avenue East, after taking two months to render

a decision on the matter of allowing a person to record their own court hearing under section 136 of the Courts of Justice Act, refused it. In her endorsement she said that the practice directive of former Chief Justice Howland, which clearly granted citizens the right to record their hearings, was not applicable in her court and neither was the Courts of Justice Act. Justice Waldman came up with her own decisions as to why court recordings should not be allowed, one of them being that if there were even allegations of violence against the parties, this should have a bearing on the decision to allow recordings in the court. There is no basis in law for her findings. They are clearly flawed. They're frivolous. They're an embarrassment to the administration of justice and a blatant waste of our tax dollars.

Another judge in Hamilton, after a lengthy recess to ponder the issue of allowing someone to tape-record their hearing, came back into the court and said that it would be okay for that person to tape-record their hearing, but the judge said they would have to remove the tape from their recording device and place it into the court file. Of course, they can't hear it. It would remain there at the court. It's absolutely silly. It just defeats the whole process of allowing someone to review their notes for the day. Arguing that took about three hours of court time. The next time that party came back to court, the judge changed his mind and said, "Okay, we're going to allow it this time." But the hours that were spent arguing that in court were almost a joke to members of the public who were sitting in the court that day. It was almost a comedy.

Just a few months ago—and I think it was maybe in March or April of this year—a high school teacher went to the court in Brampton intending to supplement his notes with a tape recording. He was stopped at the entrance to the court and was threatened with arrest if he attempted to bring the tape recorder into the court. He had a copy of the Courts of Justice Act with him. He showed it to the officers there. He said, "This is the law. You people are supposed to be enforcing the law." The officers' response to this teacher was, "That doesn't apply to us, and if you try to bring it in, we're going to arrest you." Needless to say, he had to walk out to his car and leave his tape recorder there. He went into the court and the judge again refused it, with no explanation.

One mother in Kingston reported that when she took her tape recorder into the court, again, to simply record her court hearing, court staff immediately ran into the back to advise the judge that there was a tape recorder in the room. The judge refused to come into the courtroom as long as the recording device was there. Court staff then seized her personal property from her and took it outside the courtroom. She has reported that ever since that time, whenever she goes to the court, she is now being taken to a special room and she is body-searched. She said that hands go down inside her bra to see if she might be carrying a recording device.

Another strange thing is happening in the courts. Misleading signs are being posted—many of these are on

paper; they're laminated—telling the citizens of Ontario that it is illegal to bring tape recorders and to tape-record in the court. They're clearly misleading. They give no consideration to the Courts of Justice Act. They are clearly intended to mislead citizens of Ontario into believing they have no rights under the Courts of Justice Act. Who is putting up these signs? Who has provided the instructions to have these court signs go around in various courts? They seem to have the same wording, so someone is putting them out.

This ongoing comedy in our courts is costing the taxpayers hundreds of thousands, if not millions, of dollars per year and is tying up significant court time. We have high-paid judges who in most cases are earning over a quarter of a million dollars per year. They should be making real decisions, not getting into frivolous arguments over the Courts of Justice Act and whether people can supplement their notes with a tape recorder. What is causing the judges and all those who work in the courts to be so defensive about people simply supplementing their notes with a recording device? What are they afraid of? Something smells, and that's what the average person on the street is saying, too.

Moving on to another issue, the tampering with official court transcripts: We've received disturbing information from citizens which would reasonably suggest that official court transcripts are being unlawfully tampered with in some cases. We have people calling us and saying they have obtained transcripts and that some of the words on the transcripts are missing. In the last year, we had at least three lawyers, members of the bar, who called us and indicated the same thing. They believe that transcripts were being altered at the court. In fact, one of the lawyers, a female lawyer, indicated to us that she felt somewhat afraid if she was to question this. She felt afraid for her safety if she was to question this.

Another citizen reported that when he disputed the transcripts and asked to listen to the court reporter's tape—he was given that opportunity; he was taken to a private room to listen to it—suddenly he uncovered where the tape had been dubbed. What happened is that there was suddenly a blank in the tape. He reported that there was a blank and suddenly a previously-recorded section of the tape was at the end. There was about a 20-second gap. This only comes about when someone has reduced the length of the tape and they forgot to erase the end. As soon as that became evident, he stood up and said, "What is this?" He was immediately ordered out of the room. The tape machine was turned off. He was kicked out of the room.

We have official letters from court staff admitting that they have lost transcripts; not only the transcripts, but they have lost the audio recordings that go with those transcripts. Some of these citizens have reported that these were critical court records needed for their cases.

Many citizens report that transcripts are being reviewed and approved by judges before they're allowed to get them, and that judges are taking months to get around to reviewing these things. We have cases here where

people are taking nine months to get their transcripts. They're getting them, and the people are saying there are things missing out of them, that they're not accurate. The public can see there's something wrong with this area of accountability and transparency.

The next issue I'd like to raise, and it will be the final one I raise here, is interference in peaceful protests by police and court officials with the public at the courts.

On August 25, 2006, Court Watch sponsored an event in Barrie. We called it a public awareness event in which citizens, both young and old, men and women, handed out flyers in the community of Barrie, including the geographical area around the court. We had supporters who stood in front of entrances to the court, over to the side, and simply handed out pieces of paper, 8½ by 11, to inform them of problems with the court. In fact, it was Justice O'Leary who was the topic of the flyers on that particular day. The judge was targeted because one of the ways we use to bring accountability is to embarrass and to bring forth where there have been injustices.

During this peaceful event, the citizens were harassed by police and court security. The people at the doors were clearly standing over to the side, outside the court, between the parking lot and the entrance to the doors, and approaching strictly members of the public, asking them to take a piece of paper and thanking them. Officers came out. They were saying, "You might be violating bylaws here. You might be facing litter charges." There were always officers coming out, standing and towering over these people as if, "You people are bad people." One lady, who happened to be 70 years of age, who was one of the two or three people who were at the park, had to go to the washroom. She's 70 years old; she simply wanted to go to the washroom. She went to the courtroom doors, and what she was wearing—supporters of our organization were wearing these T-shirts, which say "Canada Court Watch," and they give our website. A 70-year-old woman was wearing that T-shirt. She was refused entrance into the court to use the public washroom. The officer told her that the people inside the court had determined that she was a member of a gang because more than three people were wearing these T-shirts, and that under the court security act or something like that they were going to be enforcing that and she would not be allowed in, and if she tried to go in again she would be arrested under "gang." So we have a 70-year-old woman being labelled as a gang—no tattoos, and she's quite a respectable lady.

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One family reported that they were sitting in their car after the event—the event only lasted about three hours—with their kids. Police officers came up and asked them to identify themselves. They had children in the car and they were being asked to identify themselves. They just gave their first names, and they were heading on to a barbecue down at the beach, so they just kept going. They weren't near the court; they were in their car. Needless to say, about a week ago this couple got a call from the OPP at their home. The only thing they could

think of was that the police must have done a licence plate search on their car, found out where they lived, gotten their phone number and contacted them. This is nothing less than harassment, intimidation of citizens of this province who are doing nothing except to exercise their democratic rights to a peaceful protest and try to make the justice system better.

We've got dozens of similar incidents over the years at many courthouses where people were being threatened, intimidated. Another quick example I could give you is that a family may go to Family Court. It's funny: You'll see these court people come out and right away they select who gets to go in the court. We're supposed to have public courtrooms, but you'll see these staffers come out and they'll say, "Is your name on the court documents? If it's not, you can't come in." It could be a mother, a grandmother, uncles, aunts, but they're told they can't come in, only the people in the court, even though it's just a regular Family Court, open to the public. So there are court staff out there knowingly keeping people out.

Again we have to ask, why are judges and court officials creating such resistance to people coming in to see what's going on, to find out, to see what's happening to their friends, their relatives, their children, their mothers, their fathers and their brothers? The answer is very simple: Some of the judges and those in the courts are trying to hide what is going on and what is being said in the courts. They are trying to hide the truth. Members of the public believe that some judges and court officials are knowingly and maliciously obstructing justice. In our opinion and the opinion of many people in Ontario, judges and court officials are breaking the law and getting away with it because nobody has been challenging them up to now. We may be one of the first organizations that are actually doing this. There is growing public distrust of the court system because of the types of actions I described to you today. Those are some of the problems that we've clearly identified.

Our recommendations are: (1) On the Courts of Justice Act we would, as a general principle, like to see the use of recording devices permitted in the courtroom by lawyers, persons representing themselves and members of the media for the purposes of supplementing their notes, and that this be permitted without the approval of the judge. I believe that a similar recommendation was made by the Panel on Justice and the Media to the Attorney General's office. I think it was dated August 25. A committee was struck by the Attorney General and it made the same recommendation. We believe that this measure alone will save the province tens of millions of dollars, because right now perjury is rampant in our courts. We believe that a lot of the shenanigans going on are going to go away if people have another way of verifying what was said in the court, strictly for the purpose of supplementing notes.

The second recommendation is that we would like to see all these misleading signs taken down. They're clearly intended to mislead the citizens of Ontario. If signs have to be placed about recording, then simply tell

the truth: Other than what's allowed under law, recording is against the law. That's fine, but at least put a reference sentence in there that says "except where permitted by law." People have requested this of the Attorney General and there's been no response. In fact, one worker with the Attorney General's office wrote a letter back and stated that the independence of the judiciary is the cornerstone of the Canadian justice system. Well, I'm afraid there are a lot of people who would challenge that statement. Judges are supposed to act within the law and protect people's rights under the law, not make their own law under the term "judicial independence."

Even citizens—if someone has one of those new camera phones; I don't have one—are being stopped and told they can't bring camera phones into court. Again, it's almost like paranoia. The people of Ontario are assumed to be guilty and are going to commit a crime before they even walk into court. People should be allowed to take their cellphones and stuff in there. There's a law that says that if you use it, you're going to get fined and you are possibly going to go to jail. Most people aren't that stupid. What are you going to do if you have a recording or if you snap a picture with your camera phone? If anybody finds that, you're going to be in jail. We have to assume that the citizens of Ontario are law-abiding people and are going to go into the courts just like I am. I have a cellphone on me. I have no evil purposes with it today.

The other issue we would like to see: We have a recommendation that the judges' reviewing of transcripts be stopped immediately. We don't need people at a salary of over a quarter-million dollars reading over things that aren't supposed to be changed. What's going on? Why are we paying judges a quarter of a million dollars and more to sit back and read papers which the people of Ontario expect are supposed to come out word for word as said? Something isn't right, and the people of Ontario would certainly think that there's something wrong here. This may be one of the reasons why transcripts are taking—

The Chair: Last minute; one minute.

Mr. Beck: Okay, I've almost run out, eh?

Other than that, I'm going to read from a quote from the late Prime Minister John Diefenbaker: "We must vigilantly stand on guard within our own borders for human rights and fundamental freedoms which are our proud heritage ... we cannot take for granted the continuance and maintenance of those rights and freedoms." Members of the committee, I believe that if Prime Minister Diefenbaker were alive today, he would be deeply disappointed by what he sees going on in some of our courts. It's time for the government to get our justice system back on track and ensure that our justice system holds up to the most rigid tests of transparency and accountability.

I thank the committee for the time here today.

The Chair: Thank you very much.

Mr. Kormos: Chair, if I may, this presenter made reference to, "Most people aren't that stupid in terms of

their cellphones.” We should note that at least once a day one of the members of this committee has a cellphone or BlackBerry ring off or buzz off.

The Chair: Thank you, sir.

ONTARIO REAL ESTATE ASSOCIATION

The Chair: The next presentation is from the Ontario Real Estate Association. Good afternoon, gentlemen. You have 30 minutes and you may begin, but first I need to get all your names for Hansard, so if you could just state your names. Thank you very much.

Mr. Brian Walker: Brian Walker.

Mr. Gerry Weir: Gerry Weir.

Mr. Jim Flood: Jim Flood.

The Chair: Thank you. You may begin.

Mr. Walker: Thank you, Mr. Chair. Good afternoon, members of the committee. My name is Brian Walker. I am the president-elect of the Ontario Real Estate Association. With me today are Mr. Gerry Weir, who is the chair of our government relations committee, and Mr. Jim Flood, our association's director of government relations.

The Ontario Real Estate Association is a non-profit trade organization founded in 1922, which represents the interests of property owners and realtors in the province of Ontario. The association seeks to protect private property rights, encourages home ownership and promotes real estate as a safe, secure investment.

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To accomplish these goals the association works with a wide variety of provincial government ministries, related organizations and consumers. This submission is made on behalf of 45,000 realtor brokers and salespeople throughout the province of Ontario and our 43 member boards.

Ontario's real estate market is one of the key sectors of the economy, with both residential and commercial transactions creating significant employment and economic activity. Last year, Ontario realtors sold over \$50 billion worth of residential real estate through the multiple listing service. Our commercial members facilitated billions more in investment, commercial, industrial and institutional transactions.

Mr. Weir: OREA is generally supportive of Bill 14 and the intent to regulate the paralegal profession. But, like a number of other groups that have come before you, we are concerned that Bill 14 as presently drafted could result in the Law Society of Upper Canada's regulating the real estate profession.

As you know, schedule C of the proposed act is designed to legislate and license the activities of so-called “paralegals” and others who provide legal services. While we support the concept of licensing non-lawyers who provide legal services for a fee, Bill 14 casts its legislative net so broadly that many other professions could be adversely affected.

Subsection 1(5) of schedule C states: “For the purposes of this act, a person provides legal services if the

person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.”

Subparagraph (i) of paragraph 2 of subsection 1(6) states: “Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

“2. Selects, drafts, completes or revises,

“(i) a document that affects a person's interests in or rights to or in real or personal property.”

If our analysis of these sections is correct, Ontario realtors, who routinely draft listing agreements and agreements of purchase and sale/lease, would be subject to regulation by the Law Society of Upper Canada, known as LSUC, or, at a minimum, hope to obtain an exemption from a LSUC bylaw.

It is our view that any form of regulation by the Law Society of Upper Canada is unnecessary from both a consumer protection and a regulation standpoint.

The practice of real estate in Ontario is governed by the Real Estate and Business Brokers Act, known as REBBA. It is administered and enforced by the Real Estate Council of Ontario, known as RECO, set up as an administrative authority under the Safety and Consumer Statutes Administration Act, 1996, by the then Ministry of Consumer and Commercial Relations.

Since the profession was given self-management status, a new Real Estate and Business Brokers Act has been proclaimed with regulations, including a code of ethics, a complaints compliance and discipline regime, and vastly improved education standards.

In short, Ontario's realtors are currently well regulated by RECO and the Ministry of Government Services. There is no need for a second layer of regulation. It would only cause confusion in the minds of consumers, increase red tape for real estate businesses and impose a new tax on the profession in the form of LSUC licence fees.

Not only is regulation by the LSUC unwarranted, we have an additional concern with the concept of seeking an exemption from them. Some members of the real estate bar have been very aggressive in interpreting the current limited exemption they enjoy under REBBA to allow themselves an unrestricted right to trade in real estate, whether or not it is related to their legal work. They want a bigger share of the fees associated with a real estate transaction.

By giving lawyers the authority to impose restrictions on what realtors may or may not do, you grant them the authority to reserve for themselves work currently being done by realtors and the opportunity to increase their revenues. That opportunity may be too great to resist and should be removed.

We therefore ask that Bill 14 or its regulations include a specific exemption for all individuals registered under the Real Estate and Business Brokers Act.

Thank you. We would be pleased to try to answer any questions you may have.

The Chair: Thank you very much. We have about eight minutes each. We'll start with Mr. Kormos.

Mr. Kormos: First of all, I want OREA to know that Mr. Flood has been an incredibly valuable asset to us at Queen's Park and we appreciate his accessibility and his eagerness to participate in discussions around any number of areas here. OREA members, dues-paying, fee-paying members, should know they're getting value for dollar from Jim Flood.

Mr. Flood: May I leave now, please?

Mr. Kormos: That sounds like a set-up, doesn't it? It sounds like "but for," but it isn't. I appreciate the assistance you've given—I'm sure all of us—even when we haven't necessarily agreed, but that makes it all the better.

Mr. Flood: Thank you.

Mr. Kormos: There's agreement with your position. I think it's an unfortunate style of drafting legislation. I understand why it was. There's an effort to close every conceivable loophole that a renegade paralegal might try to employ, but I don't think it's a good way to write legislation. I don't think it's healthy. I don't think it should be the law society, through its bylaws in subsection (5), that exempts piecemeal, group by group, profession by profession.

On page 4, "Some members of the real estate bar have been very aggressive in interpreting the current limited exemption they enjoy": Expand on that. What are they doing? What's going on?

Mr. Weir: I'll give you one small example. There's an individual lawyer in the Owen Sound area who has created his—

Mr. Kormos: You've narrowed it down. Male or female?

Mr. Weir: We will not go there.

He has created his own website, which is advertising properties and FSBO, for-sale-by-owner, properties that have sold and so on and it is directly reflective to our industry, because we deal in real property.

Mr. Kormos: Of course. Many lawyers now have websites. Is this his general law office website?

Mr. Weir: He has a separate website for that particular item.

Mr. Walker: Most lawyers have an exemption under the act which permits them to sell real estate in the course of their normal law-making activity or in the course of a lawyer's normal activity. If it's part of a transaction of dealing with a customer that he—

Mr. Kormos: Give us a "for example."

Mr. Walker: As part of his service, if he was handling, I suppose, an estate and doing everything for that estate, it would probably be acceptable for him to market that property in a local newspaper or something.

Mr. Kormos: But a prudent lawyer would at least get a real estate—

Mr. Flood: Probably, but he is allowed to do that now.

Mr. Kormos: Okay, gotcha.

Mr. Flood: There is that exemption under REBBA, but it's tied to their legal work, i.e. the estate.

Mr. Kormos: Sure.

Mr. Flood: Some lawyers are pushing that envelope, and there are some lawyers who will tell you that they are exempt from the Real Estate and Business Brokers Act completely.

Mr. Kormos: How do they make money, then? Do they charge for the sale-by-owner listing or do they simply expect to pick up the legal fees?

Mr. Walker: No. They would be charging for the posting of the listing. They would be almost running a small MLS service where they're boosting the listings on the website.

Mr. Kormos: So if I went to "lawyer," "real estate," "Owen Sound," I'd find this website?

Mr. Walker: If you googled "Owen Sound real estate," I think you would find the website.

Mr. Kormos: That's interesting. Clearly that's a violation of the spirit of the provision—

Mr. Walker: Of the exemption that they have, yes.

Mr. Kormos: What have you done about it? Where have you taken this? Where does this go? Has it been resolved or has it been addressed?

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Mr. Flood: It's been discussed with the ministry; it's also been discussed with the Real Estate Council of Ontario, but I think both groups are somewhat loath to interfere. My realtor members may not like me saying this, but it's not a huge problem.

Mr. Kormos: Fair enough. Is the law society not interested?

Mr. Flood: Not to my knowledge. We have never addressed the subject with the law society.

Mr. Kormos: That would be interesting. It seems to me that if the law society is going to protect the interests that lawyers have in the status quo in terms of OREA regulation, which seems valid, they'd also be interested in ensuring that there were no abuses of it, because the legislator's response would be to say, "Okay. That's it. Game over." Right?

Mr. Walker: I think it's fair.

Mr. Kormos: You guys should get hold of the law society.

The Chair: Thank you. Mrs. Van Bommel?

Mrs. Van Bommel: Thank you very much. I just want to say thank you for your presentation. The same issue has been brought to us by previous presenters on the same sort of things. It certainly is part of the things that we will take into consideration.

The Chair: Mr. Runciman.

Mr. Runciman: I want to echo Mr. Kormos's sentiments about Mr. Flood. Certainly my working experience with him over the years has been very satisfactory, to say the least. We need more Jim Floods representing organizations around this place.

I am curious about the effort, if there was any effort in terms of consultation. I was, as you know, involved in 1996 in the move to self-regulation and am proud of it. I think it has worked pretty darn well. I'm wondering, in the process and the development of this legislation, was there any effort at consultation with your organization?

Were you blindsided by this? Did this just come right out of the ether? Did you have any knowledge that they were moving in this direction?

Mr. Flood: No. We got blindsided. We found out about it through the Real Estate Council of Ontario.

Mr. Runciman: Have you had an opportunity to have discussions with the Attorney General or his minions with respect to the intent and the fact that they've captured your organization? Is this just one of the unintended consequences?

Mr. Flood: Yes. I think it's an unintended consequence.

Mr. Runciman: Are there any assurances from anyone that there will be amendments to remedy the situation?

Mr. Flood: No. That's why we're here.

Mr. Runciman: I think you can count on amendments coming forward from perhaps both opposition parties, because we share the concern. We don't think this was an inappropriate initiative, a well-thought-out initiative.

I referenced earlier today that there's another piece of legislation before a committee sitting in another room where the government has over 100 amendments that they've brought in. So it speaks to the planning process, but I'll try not to be terribly political.

I simply want to give you assurances that we share your concern. We think this is a wrong road to be going down and we'll certainly be pursuing it on your behalf and on behalf of other regulated industries that have been captured by this legislation.

The Chair: Thank you very much for appearing before us this afternoon.

MICHELLE HAIGH

The Chair: The next presenter is Ms. Michelle Haigh. Good afternoon, Ms. Haigh.

Ms. Michelle Haigh: Good afternoon.

The Chair: You have 20 minutes, and you may begin. If the gentleman beside you wishes to present, he's going to have to state his name for Hansard.

Ms. Haigh: He's not presenting. He's just moral support.

The Chair: All right. You may begin.

Ms. Haigh: Thank you. For those of you who don't know, my name is Michelle Haigh. I am a paralegal practising solely in the Small Claims Court system. I've been in practice for approximately 10 years. I studied at Sheridan College and graduated from the court and tribunal agent program. Accompanying me today is Errol Sue. He's also a practitioner who is a paralegal operating solely in the Small Claims Court system. He's been in practice for approximately 24 years. We are not part of any paralegal association, but we are loosely associated with like-minded paralegals. I'm here presenting for a group of paralegals who think the same way that we do.

I am here to speak briefly about the proposed amendments to the Law Society Act.

Successive governments have talked for years about regulating paralegals. After finally asking the law society to assume responsibility for regulating paralegals and after they accepted the challenge, it was disappointing to see that this was part of an omnibus bill, which obviously makes your job more difficult than it should have been. I trust that appropriate consideration will be given to this issue and other matters contained in this legislation.

My colleagues and myself support the regulation of paralegals by the law society. At this stage, we do not believe that self-regulation is an appropriate option. The industry is simply too immature. I believe that you can look at what is happening to the Canadian Society of Immigration Consultants for some guidance. The limited information that I have is from published articles, but from all accounts it appears to be in disarray. Clearly, my colleagues and I, as well as others, do not want the same problems to occur in the regulation of the paralegal industry.

Within the paralegal industry there are many different views on fundamental issues, and it will be impossible to arrive at a consensus in the near future. Regulation is needed now. Having said that, I do have some concerns about regulation by the law society. My concern is with respect to the downloading of the details. The bylaws will determine the precise regulations of this industry, and until they are written, paralegals have no security about how their future will advance. Until the bylaws are established, we will not know (a) the classes of licences that may be issued to persons who are to be licensed to provide legal services, and (b) the scope of activities permitted under each class of licence and the qualifications and other requirements for each class of licence.

I understand that the bylaws will be determined by the legal services provision committee, which will be comprised of an equal number of lawyers and paralegals, in addition to three laypersons. I support the outline proposed for this committee. However, I would like to suggest that when appointing individuals to sit on this committee, specifically the five paralegals, every effort be made to appoint paralegals from an array of different backgrounds, but more specifically a paralegal to represent each sector of the industry that is currently supported by the law society and precedence, such as a Small Claims Court agent, an Ontario Rental Housing Tribunal agent, a traffic ticket agent etc. I think it's important to have each sector represented by a well-established and respected paralegal due to the fact that, without knowing what bylaws will be established by this committee, you can understand that the individuals in my profession are concerned about their future and livelihood.

The leading concern to my colleagues and myself are the terms "practise law" and "provide legal services," which are outlined in this regulation and used to identify the difference between lawyers and paralegals. We believe that many of the people we come across in the Small Claims Court, including the general public, sometimes making their first and only visit to the court, will be confused by these terms. Lawyers, yourselves and other

legal-minded people will understand the difference, but the average person would simply not know the difference and could be taken advantage of by unscrupulous individuals. These terms are too ambiguous and can be confusing to the general public, which I believe is one of the issues this legislation is trying to correct.

The general public is familiar with the word “paralegal,” although in some cases they may not always know what a paralegal is or what we can do. One thing they do know is that we are not lawyers. Their confusion is not in the difference between a lawyer and a paralegal. We have found that their confusion is in what types of services a paralegal is permitted to provide.

We believe that one of the biggest misconceptions of the public is the belief that paralegals are currently regulated. Certainly this legislation, together with public education, could go a long way in protecting the public and informing them of their rights. However, if the terms “practise law” and “provide legal services” remain in this legislation and you do away with the term “paralegal,” this could be a major setback for our profession and the intent of this legislation.

If one of the purposes of this legislation was to differentiate between a lawyer and a paralegal, I would submit to you that the proposed terms currently used in this legislation do not clarify the difference between the two professions for the public. If this legislation and the wording used within it remain unchanged, the potential for confusion, misinterpretation and misrepresentation is extensive. As a paralegal, I could simply have a client attend at my office and I can introduce myself as an individual regulated by the law society to provide legal services. From that statement, are they going to be aware of whether I’m a lawyer or a paralegal?

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In an attempt to satisfy these concerns, the law society has suggested that perhaps a person or a paralegal can identify himself or herself, for example, as a “traffic court agent.” Although clear, it could be too cumbersome for individuals practising in more than one area of law. Can you imagine the business card or letterhead of an individual who is operating in Small Claims Court and the Ontario Rental Housing Tribunal as well as traffic court? There are many lawyers who currently practise in more than one area of law, yet they continue to be known as lawyers and are not required to identify themselves by the areas of law in which they practise. The word “paralegal” has been around for some time and it should be left alone. Our submission to this committee is that you find a way to include the words “lawyer” and “paralegal” in this legislation.

Our secondary concern, yet no less important, is with respect to the generality of the definitions of “provision of legal services” and “representation in a proceeding.” In subsection 8(6), under the heading “Provision of Legal Services,” it outlines that “if a person does any of the following,” they are considered to provide legal services. In paragraph 3 of this subsection it states, an individual who “represents a person in a proceeding before an

adjudicative body.” Our concern arises in subsection (7), wherein it states,

“Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

“1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.”

Paragraphs 2 and 3 are not as much of a concern as paragraph 1 under subsection (7).

As you may or may not know, most financial institutions, corporations and even the Ontario government use collection agencies to collect bad debts. Most collection companies have a legal department that is responsible for pursuing legal action when the normal collection process is not helpful. Would these individuals or agencies be covered by this legislation? They draft and serve documents, and on some occasions represent or arrange representation for their clients in the Small Claims Court. This would mean that they are determining what documents to serve or file in relation to a proceeding. They also prepare pleadings and conduct searches to decide the appropriate individuals or entities that need to be named in a proceeding. The way the current legislation is worded, collection agencies would have to apply for licences by the law society. Is this something that you and/or the law society are prepared to undertake or consider?

In addition, under this same paragraph, it could be said that if an independent process server is hired by a self-represented litigant who is unaware of when or how to serve a court document and relies on the expertise of the process server, that process server who knows the rules of service and can competently assist the litigant would be required to be licensed by the law society. Even if a process server is hired by a lawyer or a paralegal to file and serve legal documents, and the process server decides in the field how that document is going to be served and on whom that document will be served, that would require them to be licensed under the provisions of this act the way it’s currently worded.

Again, I believe the wording is ambiguous and too broad, and consideration should be given on how this section is worded and how it can be improved to properly define who is required to be licensed as an individual who provides legal services, or, better yet, who is required to be licensed as a paralegal.

In closing, although my colleagues and I have some concerns, as outlined in my presentation today, we would like to take this opportunity to state that we strongly support this legislation. We sincerely believe that paralegals should be regulated without delay, and we support the fact that the law society is the entity that will be regulating us.

Thank you for taking the time to consider the statements which I have made in my presentation. I would be happy to try and answer any questions you may have.

The Chair: Thank you very much. A couple of minutes each. The government side: Mrs. Van Bommel.

Mrs. Van Bommel: Thank you very much for your presentation. We've heard concerns about subsection (7) before. Are you a member of the PSO?

Ms. Haigh: No, I am not a member of the PSO.

Mrs. Van Bommel: Okay, because this morning when the president of the PSO was here, Ms. Barnes, I asked her how many paralegals she thought there were in the province, and she stated that she thought between 2,000 and 2,500 and that, of those, there were only 250 who were members of the PSO. That really constitutes about 10% of what she feels is the number of paralegals in the province. Is there a reason why paralegals do not come together and organize themselves in some kind of umbrella group or organization that would allow them to speak with a unified voice?

Ms. Haigh: I can speak on behalf of myself and colleagues with whom I work very closely. The reason we have been unable to associate ourselves with organizations like the PSO is that we don't have the same views. The paralegals I currently work with, and quite a large number of the very competent, professional paralegals out there, don't agree that paralegals should be operating in every area of law. They shouldn't be operating in family law. They shouldn't be operating in criminal court. They shouldn't be doing wills and estates. That's how the individuals feel whom I represent today.

With the PSO and organizations like that—there were, at one point, several organizations like them—there was no process for regulation that they were trying to impose on their members. Anyone could be a member. You pay the fee and you're a member. There were no standards you needed to uphold. We don't know of any bylaws that may have been written by them that you had to conform to. The only thing that I'm aware of is that you had to have insurance if you were a member. That was the only stipulation. Otherwise, you pay your fee and you're a member. It doesn't matter who you are or what you do. Based on that, I didn't feel that they best represented my views, and I know they don't best represent the views of colleagues that I'm here on behalf of today either.

It's hard to get one group together to represent all paralegals. There's quite a large number of paralegals out there who we believe should not be operating, who aren't ethical, who misrepresent themselves and don't represent the public in the way they should be represented.

The Chair: Thank you. Mr. Runciman.

Mr. Runciman: Thanks for being here. It's refreshing to finally discover there is a paralegal out there somewhere who supports regulation by the law society. We've been wondering if there were any.

Ms. Haigh: There's actually a number of them.

Mr. Runciman: Hopefully we'll see more of them as well, because you've just said "individuals I represent." Whom are you representing, besides yourself?

Ms. Haigh: Individuals such as my colleague here, Errol Sue. There are other individuals such as Michelle Vanier, Teresa Medendorp and Leslie Alexander, and I believe Cathy Corsetti has the same views.

Mr. Runciman: These are all Small Claims Court—

Ms. Haigh: Small claims or Ontario Rental Housing Tribunal agents.

Mr. Runciman: So your ox wouldn't be gored in the sense of strictly confining the scope of practice.

Ms. Haigh: We hope not.

Mr. Runciman: But you're prepared to see others' oxen gored. That's what I'm suggesting.

Ms. Haigh: Absolutely. There are areas out there that paralegals are currently operating in that they should not. They don't have the education.

Mr. Runciman: Thanks.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. Haigh, thank you very much for a very capable and articulate submission. I find it interesting that you share some of our concerns, and that is, the delegation of determining the scope of practice to the law society when, it's my view, that should be the job of the Legislature. I find your comments—oh, boy, the folks watching this. You're going to raise some hackles.

Ms. Haigh: I know.

Mr. Kormos: One of the suggestions you have is that the criminal courts aren't an area where paralegals should be practising. Right now the law allows agents, non-lawyers, to appear for people on summary conviction offences.

Ms. Haigh: Correct.

Mr. Kormos: What happens there? How do you deal with that? Somebody who is totally uneducated, totally unregulated, can for no fee go represent somebody and either help them or screw them royally in criminal court, but a trained paralegal who's regulated can't. How do you reconcile the fact that the law allows it?

Ms. Haigh: When you say "trained paralegal," what kind of training do they have, though? I think that needs to be strongly looked at. I do believe that if the law society is the only entity right now capable of regulating my profession, I would believe someone who is currently operating in that area of law and who is competent acting in that area of law can be licensed to continue to operate in that area of law. I'm sure that they could have recommendations from judges whom they've been before and so forth, but again, that's something that is not going to be covered by this legislation. It's going to be covered by the bylaws of the law society.

1510

Mr. Kormos: We've been waiting 20 years-plus for paralegal regulation. If it took two more months, maybe three, to ensure that it was the Legislature that prescribed the scope of practice, would that be a particularly big burden in the total scheme of things?

Ms. Haigh: No. If it would take two or three months and it would still pass in a very timely manner, we would again like to look at those amendments and support—

Mr. Kormos: You raised collection agencies. There has been a suggestion that anybody who is employed in an arena that is already regulated by provincial or federal regulation should not be subject to the paralegal regulation. I presume that in-house staff people for a collection agency are regulated by provincial legislation.

Ms. Haigh: Yes, the Collection Agencies Act.

Mr. Kormos: So would you exclude them, then, if they were in-house—for instance, if you were retained as an agent outside of the firm. If they were in-house, would you exclude them from the paralegal regulation?

Ms. Haigh: I would suggest that should be done. I think it's too cumbersome for the law society and this legislation to undertake that burden. If they're already regulated under another form where there is disciplinary action that can be done for misrepresentation or improperly doing their job, then let that regulation oversee them and don't include them in this new legislation.

The Chair: Thank you.

ONTARIO FEDERATION OF LABOUR

The Chair: The next presentation is from the Ontario Federation of Labour.

Mr. Chris Schenk: My name is Chris Schenk. I'm the research director of the Ontario Federation of Labour. I'm here on behalf of Wayne Samuelson, who is the president. I too want to talk about paralegals today. That's schedule C of Bill 14.

We've had a lot of correspondence on this issue. I took a look in my file and found that the drafting of letters went as far back as 1999, so it has been an interesting number of years here. What concerns us about this is that while we've long favoured some regulatory framework for paralegals, we still are unclear as to precisely what is going on here in terms of specific exemptions and regulations in general. We see the need for fee-for-service people to be regulated, but there are other paralegals or people doing paralegal-type work who concern us. I'm thinking of representatives at boards and commissions and tribunals. I think of the labour relations board, the Grievance Settlement Board, the Workplace Safety and Insurance Board, all these things that trade union representatives represent their members in front of. We think they should be exempt from this regulation.

Why? There are a few reasons: (1) They're a part of major organizations which have some standards; (2) of course they're not fee-for-service people; and (3) there are accountability mechanisms under the Labour Relations Act such as duty of fair representation.

So we would hope that this exemption that has been indicated does come to fruition, but we have yet to see it.

We did present some language to the Attorney General some years back that I hope has been handed out to you on a one-page sheet. We propose that the exemption says, "This act does not apply to trade unions, their representatives, officers or agents, when acting for members and/or employees in a bargaining unit for which the union had bargaining rights, with respect to employment-related proceedings to which the person is or may become a party." That, in our view, is the best way to handle this issue and, in our view, should be in the act.

We know there are other people, like Office of the Worker Adviser and Office of the Employer Adviser, who are also non-fee-for-service people, and I hope their

concerns have been taken up. We're primarily here to ensure that trade union representatives are exempt.

Finally, we think that this language, as I stated, should be in the act. We are not in favour of contracting out the regulation of this act to the Law Society of Upper Canada. We are fully aware that the Law Society of Upper Canada is an esteemed institution and that it has a role to play, and we quite support much of its activities, but in our view, legislation and regulation are the purview of democratic government, not the purview of some other institutions.

The way this section of the bill seems to be designed is that the exemption for thousands of trade union staff people who are working on behalf of their membership will be the purview of the Law Society of Upper Canada, and presumably they can change this. I have no idea what mechanisms are in place for changes or amendments to it, nor what we would do to lobby them for changes as we lobby here for changes.

One of the Toronto Star writers, James Daws, of a few years ago wrote an article, the title of which was, "The Law Society Is Like a Fox in a Paralegal Chicken Coop." I'm afraid that's something I have to agree with.

There are certain conflicts of interests between paralegals and lawyers. Some paralegals may be in dire need of regulation, and we support that, but other paralegals are doing some more mundane work of lawyers for much less, and some lawyers don't like it. It seems to me that, if that's the case, then it should be reiterated that it's a government role to control and regulate the enforcement of this act.

That's the long and short of my presentation, and I'm certainly more than willing to answer any questions that I can.

The Chair: Thank you very much. We have a little over eight minutes for each side. We'll begin with Mr. Runciman.

Mr. Runciman: I really don't have any questions. Your position is well said. We've heard this position from others representing trade unions as well. We support the message you're delivering and we'll follow through in terms of future discussions in this forum and in the Legislature as well. You can count on it.

Mr. Schenk: Thank you.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. Give Wayne our best.

Mr. Schenk: I will.

Mr. Kormos: I want to understand very, very clearly: I hear you saying that it's incumbent upon the Legislature to define who's a paralegal and who's going to be regulated, not to delegate that to another body, in this instance the law society.

Mr. Schenk: That's correct. I understand that this has been a long time in coming and it's been difficult, but for us it's very important that legislation and its operation, its enforcement, its regulations are a part of a government's duty. They shouldn't be, in our view, able to contract out of that.

Mr. Kormos: I appreciate that observation. It's something we've been trying to impress upon other committee members from the get-go.

The other issue, then, is that later on today, I think the Ontario Association of Social Workers is going to be here. I remember the struggle community college graduates from the social service program had to get into the college of social workers, the regulatory group. The BSW/MSW types didn't want them; they were considered above them. So the community college graduates and the colleges fought, and finally there was an agreement that they'd all be under this umbrella, because the community college graduates said, "Hey, me too. I want to be perceived as part of this community of social workers."

1520

I've asked paralegals and others why it wouldn't be in the interests of paralegals to be able to say, "We are"—this is my problem; I use the word "members"—"members of the Law Society of Upper Canada." There seems to me to be—I could be dead wrong on this—some prestige attached to that, some legitimacy attached to that.

I hear you when you say that it's our job, the Legislature's job, to set the standards, to set the guidelines, other than the minutiae which could be done by regulation, or perhaps to a certain degree, as long as there are clear guidelines, by another body. Are you adamant that the law society should not be, in any way, shape or form, regardless of its structure, the regulatory body?

Mr. Schenk: That's certainly our strong view. As I say, the law society is an esteemed institution and it has a definite role to play, but we just don't think this is within their purview.

Mr. Kormos: I've had concern because, for instance, the parliamentary assistant of the Attorney General has been a no-show for three consecutive days now. He hasn't got much interest in the bill. I've been concerned that on the one hand this bill is losing its wheels, but then at the same time maybe the reason the PA isn't here is because this is meaningless and it's a done deal. They've got a majority. They use time allocation. They'll use their guillotine motions to cut off debate, to terminate committee hearings. They'll use their jackboots quick as a boo.

If it's going to be the law society, are there any bare minimums that we in the opposition, along with other interested parties, should be fighting for? For instance, more representation in terms of benchers by paralegals? Because right now there are only two benchers proposed, in all of the law society, to be paralegals. Should we be fighting for more paralegals as benchers? Mr. McMeekin has seized upon the government as sort of the court of last resort. What did you refer to it as, Mr. McMeekin?

Mr. McMeekin: It wasn't my reference.

Mr. Kormos: I know, but you've repeated it.

Mr. McMeekin: Appeal to Caesar.

Mr. Kormos: Appeal to Caesar, yes. Should there be appeals to little Caesar?

Interjection.

Mr. Kormos: Yes, mini-Caesar. Is there any minimal sort of things that we should be calling for, or is this just a no-go as far as you're concerned?

Mr. Schenk: We haven't gone into those kinds of issues in detail because, quite frankly, we're not quite sure whether or not it's a done deal or what kind of state it's at. As I say, we haven't seen the regulations. We've been told, even in written form, "Yes, we will consider favourably an exemption," but we've never seen anything, so it's a little vague for us. At this point in time I think our position, just to lay it out as I have, is that we think it's the government's job to put in the exemptions, to enforce and make the regulations and operate this legislation, and not the purview of the Law Society of Upper Canada. We haven't gone beyond that, to be perfectly frank.

Mr. Kormos: Thank you kindly, brother.

The Chair: Thank you. Mrs. Van Bommel.

Mrs. Van Bommel: Thank you for your presentation. I don't know if it's because of the previous presenter, but I'm starting to get a little worried because I think I'm starting to think the same way as Mr. Kormos.

Mr. Schenk: That could be worrying, yes.

Mrs. Van Bommel: Yes. But on the issue of regulation by the law society, I have to agree with Mr. Kormos when he says there is a certain amount of credibility and prestige that would be bestowed upon the profession of paralegal by being a part of the law society.

Mr. McMeekin: Did you say that?

Mrs. Van Bommel: Yes, this is what I heard from Mr. Kormos. So it worries me. I think the previous presenter certainly brought that to mind.

Would you not agree, though, that that is the case—that being associated with the law society would bestow upon paralegals and their profession those kinds of qualities?

Mr. Schenk: I think the law society operates for lawyers and, as far as I know, does a good job. I don't think that that's the same for paralegals. I think they should be under the legislation and we should have the definitions and regulations and exemptions in the house of government as opposed to the law society.

The Chair: Mr. McMeekin?

Mr. McMeekin: Thank you, Brother, for coming out and sharing your perspective. Do give Brother Samuelson my warmest regards as well, please.

A couple of things quickly: If we'd wanted to time-limit the bill, we wouldn't have done 15 days of public hearings. Our record as a government is very good on the infrequency, I guess, compared to certain other quarters, but that's for another debate.

I just want to say that I agree with your fundamental thrust, but I just want to caution that we don't want excellence to become the enemy of the good. I think the thrust here is to have our union brothers and sisters, who are doing incredibly important work, exempted, and I think that's where we need to go. The law society, as I understand it, has agreed to that in writing. So we're at least halfway there. Who knows where we'll end up? I

can't, obviously, commit on behalf of the government, but I want you to know that I agree with you. I will be advocating the position that you put.

The Chair: Thank you very much.

PAUL HONG

The Chair: The next presentation's from Paul Hong. Good afternoon, sir.

Mr. Paul Hong: Good afternoon, sir.

Mr. McMeekin: How are you, Paul?

Mr. Hong: Great, thank you. How are you?

The Chair: Your presentation will be for 10 minutes, and you may begin.

Mr. Hong: Thank you very much, Mr. Chair. I'd like to thank the committee for allowing me the opportunity to present today.

I want to begin by first of all commending the government for taking this step, certainly with reform to the justice of the peace appointment process. It has been many years and many reports that have asked for the recommendations and approvals, and certainly it is a very courageous and good initiative for the government to reform the process.

Having said that, because it has taken so long, I think it's imperative that we try to get a couple of things improved, and I will limit my remarks to two issues. First is the qualification and training requirement for JPs. Certainly a topic that is a favourite of Mr. Kormos's and Mr. Runciman's is the shortage of JPs, which is not addressed in this bill.

First off, the training and qualifications: Since Confederation, there have been numerous complaints about the lack of training and the qualifications of JPs. As you note, in 1968, the McRuer commission recommended that the process be depoliticized and that the qualification of a person be the sole criterion for appointment and that we should have mandatory training and refresher programs.

Those recommendations weren't implemented, and in 1981, Professor Alan Mewett's report suggested that JPs' training ranged from "virtually non-existent to the barely acceptable." He suggested that there should be a minimum of a grade 12 education for presiding JPs.

So I did a little bit of research in terms of what legislation is in place across Canada, and I found that there is no standard system. There's simply a patchwork within each province. Most are lay benches. For instance, in BC, there are three types of JPs: a judicial JP, a judicial case manager JP, and a court services JP. For a judicial JP, there's a 10 years' minimum experience in the justice system or equivalent that's required, but there's no minimum educational requirement. In BC, only judges hear charter motions, and JPs are not permitted to hear any kind of trial matters that lead someone to jail. Furthermore, for the other two types of JPs in BC, you have to pass a certain course before you could actually be appointed.

Manitoba and Saskatchewan are the two provinces that bar practising lawyers and police officers from becoming JPs. In the Northwest Territories, there's a six-month minimum residency requirement. Interestingly enough, in New Brunswick, there are no JPs; judges do all the work that JPs do here. In Alberta and Nova Scotia, there is not a lay bench. In fact, in Alberta you have to have a law degree, admission to the bar and five years' experience. In Nova Scotia you need a law degree to become a presiding JP.

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Those aren't issues without controversy. For instance, the Alberta JPs took the government to court and it went all the way to the Supreme Court, but the Supreme Court felt that a reasonable and informed person would see the legislation as a means to strengthen the qualifications and independence of the JP. So I have to ask myself: Will Bill 14 radically alter the JP composition? I would suggest to you that the answer is "probably not," the reason being that the vast majority of JPs in Ontario already meet the minimum qualifications that have a caveat that allows for people who don't meet the minimum qualifications to become a JP.

In an internal survey by the JP association in Ontario, 90% of those surveyed who responded already had a post-secondary education. In fact, most of those people had university degrees. Furthermore, in Toronto, 30% of JPs have a post graduate degree. So it's questionable whether the minimum standards that we have now, that we've reached after years and years of calling for change, will actually change the status quo as it stands on the ground.

Second, the issue with training: Because JPs are not lawyers, there's a widespread belief among certain groups that they are not well-trained. Prominent lawyers such as Brian Greenspan and others feel that JPs have too much power for the training that they receive. In fact, the Criminal Lawyers' Association felt in 2002 that there was a lot of dissatisfaction with JPs.

Some people argue that a law degree is not required. A lay bench may be better. They're more representative of the common people, and the traditional view has been that the JP is the buffer between the state and the individual. Some jurisdictions have this minimum residency requirement and others say that if you know the local conditions, it gives you a step up. Others feel that lawyers would get too wrapped up in the legal terms to be able to make good decisions.

I would suggest that if a law degree is not required, then what we do need here is a standardization of the legal training for JPs. This could help avoid challenges to their competence and assure professionals that the subordinate judicial officers are qualified and should handle important judicial matters. In recent times, some people have cited Ontario for having a good training system. It's my understanding that they have, after they're appointed, a six-to-eight-month mentorship program where they sit with a senior JP and they kind of listen in on the cases. In terms of continuing legal education, there are usually two

seminars each year dealing with a variety of topics. However, as recent as 1991, the majority of JPs in Ontario felt that their ongoing training was inadequate. That was a survey done by the U of T.

Bill 14 does not address training and standards. Some jurisdictions, like BC, have tests before an individual can get appointed. I'm not sure why there is this aversion to being tested. For instance, lawyers are tested. Having just recently gone through the bar admissions exams, it's not fun, but it certainly means that once you've passed it, you've got this basic standard that you've reached. The accountants have the UFEs. In the United States, there are certain judges who are elected who have to pass exams before they can sit as a judge. Occasionally, you hear the funny story of someone being elected a judge who can't pass the exam, so they have to resign. I think the problem here is that most lawyers, most people who are in the court system, police officers, do not know what standards are required to be a JP and even what standards are required to serve as a JP.

A bigger problem than just the minimum qualifications is the shortage of JPs that we have in Ontario. A 2002 study by researchers at the University of Lethbridge compared the justices of the peace across the common-law jurisdictions in Canada. Unfortunately, our great province has fared not too great in that survey. We are number 1, but number 1 for having the worst JP-to-population ratio. In fact, in Ontario, there's one JP for every 35,000 residents, whereas in BC it's one for every 10,000 residents and in Alberta it's one for every 6,000 residents. The survey is from 2002, so it is a bit dated, but I don't think too much has changed since then.

Furthermore, the workload has increased in Ontario. Over the past five years, courtroom bail hours have increased by 73%, charges received by 24%, and total hearings by JPs have doubled. This is information from Chief Justice Brian Lennox of the Ontario Court of Justice. So it's not that big of a leap of faith to see why we have a backlog in our court system. Various groups have called for more JPs: elected officials such as Mr. Runciman and Mr. Kormos, who certainly has the most colourful quotes; towns and municipalities—

Mr. Kormos: Thank you, Mr. Hong.

Mr. Hong: Thank you, sir. I understand Mayor Hazel McCallion was here, so I'm sure she shared her opinion.

Mr. McMeekin: She's even more colourful.

Mr. Hong: Waterloo, Hamilton, York region have all passed resolutions expressing their dissatisfaction with the current state and the requirement for more JPs. I'm sure you know that the police associations have also done the same.

This shortage has caused a problem with the Highway Traffic Act, and it's not standard in Ontario. For instance, in Toronto 42% of charges are withdrawn; in Peel it's 30%; in London, Hamilton and Ottawa it's 10%; and in York region it's about 50%. So as a result, municipalities are losing millions of dollars in revenue.

More problematic is the fact that by 2011, 37 JPs will reach mandatory retirement age and 82 will reach volun-

tary retirement age, representing 40% of the JP complement. The ability to have per diem JPs, as in this legislation, is a very positive step for the long term, but in the meantime what do we do about the shortage, the backlog and the administration of justice that is suffering?

Looking at my time, I guess it's time to conclude. Bill 14 is a step in the right direction for JP reform, and the government should be commended for that initiative. However, training and standards are not addressed and the minimum requirements probably will not change the justice of the peace complement. Furthermore, the bill does not address the shortage of JPs, and perhaps it's time that we looked at the one-to-one replacement that the judges have.

The Chair: Thank you, Mr. Hong. Mr. Kormos?

Mr. Kormos: I appreciate that Mr. Hong came here on short notice. I just read very quickly his article that is published in *Criminal Reports*: an impressive bit of work, and I thank him for his interest in this matter; a very good article that I intend to refer to in the course of polemics over the next several months in the Legislature. Thank you, Mr. Hong. Good luck at the Royal Military College.

The Chair: Mr. McMeekin.

Mr. McMeekin: We would echo all those affirmative remarks. I found your presentation to fill a void which I had wondered if somebody would speak to. We've had some people do it in an en-passant sort of way. It's amazing the kind of research you've done to substantiate the points you've made, and I, for one, and, I think my government colleagues, are very appreciative of you taking the time to do that.

Mr. Hong: Thank you very much, sir.

The Chair: Thank you again, Mr. Hong.

TORONTO BOARD OF TRADE

The Chair: It's my understanding that the next presenters are here from the Toronto Board of Trade. Good afternoon. As soon as you're settled in, you have 30 minutes. If I can have you folks identify yourselves for Hansard, please.

Ms. Prema Thiele: Prema Thiele.

Mr. Norm Tulsiani: Norm Tulsiani.

The Chair: Thank you very much, and you may begin.

Ms. Thiele: Good afternoon. Thank you for the opportunity to address this committee. As I said, I'm Prema Thiele. I am the chair of the Toronto Board of Trade's business affairs committee. When I'm not wearing that hat, I'm a partner with the law firm of Borden Ladner Gervais in Toronto. With me here today from the board of trade is Norm Tulsiani. Norm is the in-house legal counsel to the Toronto Board of Trade and the policy adviser to the business affairs committee.

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We're here obviously on Bill 14, and although it's a very detailed piece of legislation, we are here to focus on the proposed amendments to the Limitations Act, 2002.

First off, the board, as we have made known before, supports the proposed changes to the Limitations Act. In fact, the board of trade, together with other stakeholders, law firms, associations, requested the changes that are actually outlined in the bill.

If I may, just some background to the board's participation in this process which led to the changes that are in the bill: The Limitations Act, in its whole, works well and represents an improvement to the previous somewhat patchwork limitations regime that was in place before 2002. When the Limitations Act, 2002, was tabled, the board of trade was generally supportive of the proposed legislation. We noted that the legislation represented the culmination of many years of modernization of Ontario's limitation period legislation. The board stated that the new law was welcome, both from a simplification and a rationalization perspective of what had previously been a complex and somewhat inconsistent array of statutory limitation periods.

However, we also noted that section 22 of the new Limitations Act appeared to have been introduced into the bill at the last moment and with little or no discussion with the legal or business communities as to its implications. There had been a lot of communication on the new Limitations Act itself, but not on section 22. The board stated quite clearly that the freedom of commercial parties to contract freely is not one that should be tampered with lightly. There are legitimate business considerations behind the decision of business parties to set out a specific limitation period in their contracts. Therefore, we recommended that section 22 be repealed or, if the intent of that provision actually going in was to protect consumers, that it be revised to apply only to consumer transactions. However, the province passed the Limitations Act, 2002, into law without amending section 22, as had been recommended by the board of trade.

During the next two years, it became very apparent that the concerns expressed by the board of trade were starting to materialize. Restrictions in the Limitations Act, 2002, began to interfere, we believe, with the ability of businesses to structure deals to best meet their needs. Complaints began pouring in from businesses and their legal advisers outside Ontario dealing with Ontario-based companies. In terms of my practice, I am primarily a corporate securities lawyer who does cross-border work, and I and others on the committee who do a lot of commercial work had seen many complaints coming in.

The board of trade and other organizations contacted the Ministry of the Attorney General during the course of 2004 regarding our concerns about the Limitations Act, 2002. Representatives of the board met with the Attorney General's policy staff, specifically Adam Dodek and John Lee, in December 2004 to outline the practical problems that had been created by section 22 of the act, which essentially restricted the ability of business to contract out of statutory limitation periods. That had been something that had been in Ontario and other jurisdictions across the world—a state of being that is taken as something that would normally be something that commercial parties can do.

A few months following our meeting with the Ministry of the Attorney General, we were advised that amendments would be made to the Limitations Act in light of concerns that were expressed by the board and that were echoed by many other groups besides the board.

Therefore, in October 2005, the Attorney General, Mr. Bryant, introduced Bill 14, which included amendments to the Limitations Act that were designed to address the concerns we had raised with the minister's policy staff.

In the spring of 2006, the board of trade was approached by a group of representatives from the construction sector who had some concerns about the amendments that were proposed in Bill 14. Board representatives met with this group in April 2006 to hear their concerns and see if we could identify areas of common agreement. Essentially, the board of trade's position is very simple and very clear: It believes that business parties should be free to agree by contract to whatever limitation period meets their particular needs. I know that the group of construction industry representatives we met with believed there ought to be certain restrictions that are imposed by statute.

We continue to believe that the rationale of our initial recommendations to the Ministry of the Attorney General, which were made in 2004 and are now reflected in the bill—we think they continue to make good sense. Our reasons for being here today to support the proposed amendments can really be summarized as follows:

First, section 22 of the current legislation, we feel, places unnecessary restrictions on the ability of business parties to manage the legal aspects of their transaction in a manner that best suits their particular needs. At a practical level, this provision has proven to be costly, time-consuming and vexing to businesses, both in Ontario and abroad. It has also resulted, we believe, in Ontario being offside as a major commercial jurisdiction in comparison to other Canadian provinces and in particular to London and New York, where the ability to contract out of limitation periods is there. As a result, jurisdictions other than Ontario have been designated as the applicable law and venue for legal proceedings in a number of instances.

In addition, it has resulted in lawsuits being commenced which might otherwise have been avoided, which unnecessarily clogs the court system because of course there's something that is called, as you may know, a tolling agreement, which simply means that parties to a lawsuit can agree to toll the limitation period and stop it while they try to agree on an out-of-court settlement. So by not allowing the contracting out of a limitation period, we believe it is unnecessarily going to result in lawsuits having to be proceeded with, clogging up the court system.

We believe the restrictions in section 22 are wholly unnecessary when they apply to businesspeople who have access to legal advice. For these reasons, we strongly believe that the existing legislation should be amended to give business parties freedom of contract to set the limitation period that best meets their needs.

The Toronto Board of Trade supports a fair and balanced consumer protection regime. We certainly understand that protecting consumers may have been one of the primary reasons for the last-minute inclusion of section 22 in the current legislation, and I think the amendments proposed in Bill 14 reflect this goal and continue to offer strong protection for consumers.

Accordingly, the Toronto Board of Trade believes that the proposed amendments to the Limitations Act set out in Bill 14 would, if passed without further amendment, go a long way to addressing the legal gap between Ontario and our trading partners with respect to limitations rules. Limitations legislation is an important business statute. It's a legal infrastructure type of statute. Combined with the process that all of you are currently going through in terms of the reform to the Ontario Business Corporations Act, I think, along with that, these changes will help our province build a corporate-commercial law infrastructure and gain a leadership position in this area.

As drafted, the bill would achieve the changes sought by the business community. It would confirm that parties will continue to enjoy freedom of contract and that consumers will continue to be protected. Accordingly, it is our strong recommendation that the proposed amendments to the Limitations Act, 2002, as set out in Bill 14, be passed without amendment and as soon as possible.

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We've attached to our summary of remarks a copy of the letter that we made to the Honourable Mr. Bryant in 2004, which sets out a few more anecdotal and other examples of why we feel so strongly about maintaining what is now contained in Bill 14.

We appreciate this opportunity to speak to what is obviously a very narrow but important point and would be happy to answer any questions that any of you might have.

The Chair: Thank you very much. A little bit over six minutes for each side, and we'll start with Mr. Runciman.

Mr. Runciman: I will defer right now. Sorry, I was in another meeting, so I don't think I can appropriately question you at this point.

The Chair: Mr. Kormos.

Mr. Kormos: This whole schedule has become more and more fascinating because several people now have made contributions to the discussion around it. We have learned about tolling agreements, which allow contracting parties to extend the limitation period and remove themselves effectively from the statute. Right?

Ms. Thiele: Let's just say, we're on the eve of a limitation period coming to an end or we know that there is a limitation period facing us: Instead of having to start a litigation claim, it allows the plaintiff and the defendant to sit down and actually negotiate without having to worry about having to start the action.

Mr. Kormos: Except, we also learned that there were two types of tolling agreements: There were what I call front-end tolling agreements, where, when parties are contracting to do work for each other, for instance, they

can agree at that point in time that the Limitations Act will not apply. Right?

Ms. Thiele: Yes, absolutely.

Mr. Kormos: If that's the front end, I suppose the back end is to say, "Whoa, we're at the cusp of a limitation agreement. We don't want to abandon any of our rights against each other because we want to use this process to try to resolve the matter." So that's the back-end tolling agreement. In both instances, people are talking about tolling agreements that extend the limitation period. Would tolling agreements similarly be enforceable that concentrated the limitation period for whatever reason? If, for competitive reasons in bidding on a contract, two parties want to say, "No, it's not going to be a 15-year limitation period; any griever, any plaintiff in this relationship is going to be limited to a five-year limitation period," is that a legitimate thing too in the world of tolling agreements?

Ms. Thiele: It's possible. I don't think it's the likely scenario because you're trying to extend—that is what you are trying to do so that you don't have to bring the claim. Just to be clear, "tolling agreements" is one term batted around. I think what has been equally important to this is in the commercial side of things, where parties to, for example, the sale of a business would enter into an agreement of purchase and sale, and in that agreement of purchase and sale there would be representations and warranties that are given. So that's, in my opinion, where there would be a contracting of the period more than there would be in the litigation context.

Mr. Kormos: That's not really a tolling agreement; it's how a warranty or a term of the contract—we made reference to it earlier today and the Ombudsman did yesterday, about how banks give you a 30-day window to report any discrepancies in your account. They've circumvented the Limitations Act. I suppose that's yet another tolling agreement, right?

Ms. Thiele: It's a term that litigators use for—

Mr. Kormos: I understand why two independent business entities would want to do this, especially on the front end, when you're bidding on a contract. It would give you a competitive edge in maybe one of the terms of the request for proposal. Where's the consumer protection in it? You talk about protecting the consumer. Where's the consumer being protected?

Mr. Tulsiani: Essentially what the amendment is proposing is that there is a blanket prohibition from contracting out of the act. So if there are any limitations imposed by the act anywhere, they apply, except in certain cases. Under the current act, what it says is that those contracts that provided for different limitation periods that were in place before the act came into place continue to be valid. Anything after that must comply with the limitation period set out in this act.

The change that's proposed in Bill 14 is saying that if all the parties to a contract are acting for a business purpose, they may, by contract, provide for a different—so any changes are not valid as against a consumer. So if a consumer goes into a gym and says, "Listen, I want to

take out a membership for two years," and then says, "You know what? Maybe it's not a good idea," as long as any one party to the contract is a consumer, they cannot contract out of the Limitations Act.

Mr. Kormos: Quite right. I suppose that subsection (2) is a good thing, because it puts the limitation period in abeyance while you're using a third party to try to resolve the issue, right?

Mr. Tulsiani: Right. And if there are three or four or five parties to the contract, they must all be acting for a business purpose. Otherwise, you can't get out of the Limitations Act.

Mr. Kormos: Otherwise, it doesn't apply to the—

Mr. Tulsiani: Right. So the consumers are protected in that way.

Mr. Kormos: As you may or may not know, I've got a real bug in me about these time-limit restrictions on the gift cards from Sears and stuff—one year, 18 months, and it's no good anymore. You know what I'm talking about, don't you? They just rot my socks. Honestly, I want to take those people and turn them upside down and knock them silly. The consumer is not being protected there.

Mr. Tulsiani: I think it is. As long as any one party to any contract is a consumer, then you cannot contract out of the Limitations Act.

Mr. Kormos: So you're calling Sears the consumer too.

Mr. Tulsiani: No. I'm just saying that if you're dealing with Sears and you are a consumer, then you are protected.

Ms. Thiele: So Sears cannot impose a lower limitation period upon you.

Mr. Kormos: The banks do, with the 30-day window.

Mr. Tulsiani: No, that's their policy. That doesn't necessarily mean that you're legally precluded from making a claim and acting on that claim. They would like to limit their liability in some fashion and encourage their customers to be diligent and act in a reasonably expedient manner, to check their statements regularly rather than come back six months later and say, "You know what? There was a deposit that was to have been made that never got reflected," or, "A withdrawal has been made that I don't recognize."

Mr. Kormos: That's helpful. That guy should have gone to Small Claims Court instead of the Ombudsman. The Ombudsman only gave him 50 cents on the dollar. Remember—4,900 bucks? Where was legal advice, access to the law, for him?

The Chair: Ms. Van Bommel.

Mrs. Van Bommel: Thank you for your presentation. I noticed in your presentation that you mentioned specifically meeting with the construction sector to discuss the Limitations Act. The representatives of the construction sector have appeared before this committee already. In your discussions with them, were you able to come to any understanding or agreement on their position on the Limitations Act?

Ms. Thiele: The complicating factor is that they are, as I understand it, not just one body. There are different

bodies within what was presented to you. We met with representatives of the construction association, like the general contractors, the architects, the surety association, so I don't entirely know if their position gelled. As we understood it, they were more concerned about the 15-year ultimate limitation period than the two-year. I don't know where they ended up coming out in terms of what they have indicated to you. We certainly made it clear that our first and foremost concern has always been the two-year period, because obviously that is something that affects things immediately. The board's position has always been clear that, as we have indicated, we favour flexibility across the board. So I don't think it's a matter of us coming to an agreement, but I think we did come to an understanding of each other's positions and where we were focused, because I think we want to make this work. These amendments are important.

Norm, do you want to add anything to that?

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Mr. Tulsiani: The first benefit we got from that meeting was that we had a clear understanding of where they stood, so it was useful in that sense. In terms of coming to any areas of common agreement or a common position, which I think was the goal for the sector in meeting with the board, I don't think we arrived at anything specific.

What we did agree upon, in a broad sense, was that our first and primary concern is that businesses—and it's important to note that it's only business parties that were asking to be allowed to contract out. As soon as there's a consumer involved, even if it's just one party of a multiple-party agreement, it doesn't apply. Business parties acting for business purposes should be allowed to contract out and have whatever flexibility they need to fashion whatever terms they think are appropriate based on their business interests and based on the legal advice that they get.

We also would like to see flexibility with respect to the 15-year ultimate limitation period as well. It's not as immediate a concern for us. I think the reason that we continue to support flexibility, even on the 15-year period, is that there are certain projects, especially mega projects—if you're looking at offshore drilling for oil, or the pipelines that go across land and take decades to build, much less the useful life they have—when you're dealing with those kinds of mega projects, 15 years, typically, for most people, especially consumers, seems like a very long time.

In better than 90% of the cases, having flexibility from zero days to 15 years is sufficient for many transactions, but there are a handful of transactions that would look for flexibility above and beyond the 15 years. I agree with you that the volume of those transactions might be fairly limited, but if you look at the complexity and the monetary value—

The Chair: Sir, can you just move back from the mike?

Mr. Tulsiani: —sorry; yes—and the number of people who are employed in those projects, they're actually quite significant.

So I think, in a nutshell, what the board is saying is that we believe in the flexibility across the board, both with respect to the two-year period and the 15-year period, but our more immediate concern is the two-year and, secondarily, the 15-year. So I think the construction sector, if I understood them correctly at that meeting, would like both the two-year and the 15-year rule to continue. However, they're more concerned about the 15-year rule. So there may be some sort of small meeting-ground there. I'm not sure if that's clear.

Mrs. Van Bommel: Thank you very much.

The Chair: Mr. Runciman, did you want to ask a question?

Mr. Runciman: No.

The Chair: Thank you very much for your presentation.

We're just waiting for the hook-up for the 5 o'clock video conference. Just a few minutes.

Mr. Kormos: While we're doing that, a question, because I know nothing about this area of law: Does a limitation period make a statement of claim an action, a commencement of an action, a nullity, or does it have to be pleaded?

Ms. Thiele: Sorry?

Mr. Kormos: Does it have to be pleaded, or is the action a nullity?

Ms. Thiele: If you do not bring the action before—

The Chair: Mr. Kormos, we have—

Ms. Thiele: You cannot bring the action. So it's—

Mr. Kormos: So it's a nullity.

Ms. Thiele: Yes.

The Chair: Thank you very much for your presentation.

COUNTY OF CARLETON LAW ASSOCIATION

The Chair: Mr. Conway?

Mr. Thomas Conway: Yes.

The Chair: Good afternoon. It's Vic Dhillon from the committee. Welcome to the committee. You have 30 minutes. You may begin your presentation.

Mr. Conway: Thank you, Mr. Chairman.

Let me first say that I have been watching the proceedings late in the evenings after a long day's work, and I've heard many of the submissions that have been made before you today. So, taking a page out of good advocacy, I intend to be very brief, and I don't expect I will use my full 30 minutes. But I would like to thank you, first of all, for allowing the County of Carleton Law Association to make a presentation to you this afternoon.

As I say, my remarks will be very brief, because I know that, in large measure, I will be repeating many of the able submissions that have been made on behalf of the county and district law associations, particularly those submissions made by CDLPA and the Advocates' Society. So I won't repeat those, but I did want to, on behalf of my association, weigh in in support of Bill 14 and its passage, particularly with respect to those pro-

visions in the bill dealing with the regulation of the paralegal profession.

Just by way of background, the County of Carleton Law Association was established in 1888 and is one of the oldest, largest and most active county and district law associations in Ontario. Our membership numbers nearly 1,300, comprised primarily of practitioners in private practice, but includes as well some in-house counsel, lawyers employed in government at all levels, academics and members of the judiciary in the Ottawa area. Since its foundation, the CCLA has operated the courthouse library in Ottawa. The objective of our association is to advance the interests of our members and promote the administration of justice by providing an excellent-quality library to our members and the members of the public, providing quality and affordable continuing legal education programs to Ottawa and eastern Ontario lawyers and advancing the interests of our members in the practice of law. Also, we promote a liaison among our members, the judiciary and the government of the day and we provide guidance and leadership to members of our association who face challenges in our profession, we of course try to promote collegiality among our bar and we try to promote the administration of justice to the broader community.

We are really a grassroots organization in the sense that we represent a variety of practices in Ottawa. We represent lawyers who practise in large offices, those who practise in small offices and indeed those who practise on their own.

Our members have encountered paralegals and do encounter paralegals almost every day as they practise and provide services to the members of the public, both in the courts and in their offices. We as an association have been following the debate over the regulation of paralegals and indeed have participated in that debate over the years. For as long as I can remember, the paralegal issue has been a perennial issue that up to now has almost appeared to be without resolution. You heard, I'm sure, many stories and anecdotes that support the desire to regulate the paralegal profession. I will not add to those anecdotes. But it is clear, and I think there is consensus, on this point: The paralegal profession does need to be regulated. The public needs to be protected from unethical paralegals who ply their trade, make promises that they can't keep and who end up being really a scourge on Ontarians.

The question that you have been mooting for the last few days is, who is the appropriate regulator? I would submit and argue that the law society is the appropriate regulator, for a number of reasons. First of all, the law society has been regulating the legal profession for hundreds of years and it has an established infrastructure for regulating lawyers and how they practise law, and they have been very effective in doing that over the years. Certainly, in recent times, the law society recognizes that its one and only function is to regulate in the public interest. Indeed you have heard that lawyers often don't see eye to eye with the law society, and that, in my submission, is some indication that the law society is

doing a good job. So the law society seems to us to be the logical choice because there is already an infrastructure there and they have the experience in regulating the profession and regulating, if I can use this term, the legal industry.

That's the first reason, and probably the best reason, but there is another reason why they should regulate paralegals, and that is simply this: The paralegals, as far as we can determine, have not reached a consensus on who should regulate them or how they should be regulated or if they should be regulated. That is simply, in my submission, another reason why the law society should be given the responsibility for doing that.

Our association believes that paralegals, if properly regulated, have an important role to play in the provision of affordable legal services to the citizens of our area. Indeed, many of our members work closely with paralegals now, and we do not see paralegals as being a threat to our livelihood but really as an adjunct or an add-on.

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What we really want to see is a paralegal profession that offers valuable services to the public and allows the public to choose intelligently whether they will choose to have their legal services provided by a lawyer or by a paralegal; and that the public will have the assurance or the confidence that they can make that choice, knowing that if they decide to have services provided by a paralegal, that paralegal will be competent, will be insured against any mistakes they might make, and that the product they will receive from that paralegal is one they can rely on.

I would simply echo, as I said earlier, many of the submissions that you've already heard from, CDLPA and the Advocates' Society. I'm simply here to really add the voice of Ottawa lawyers in urging you to encourage the passage of Bill 14.

Thank you very much. I'd be happy to take any questions you might have at this time.

The Chair: Thank you very much, Mr. Conway. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, sir. You probably know that Mr. Murphy and Mr. Bockock were here earlier today on behalf of CDLPA, and your position is consistent with theirs. I understand it. I appreciate your comments.

Mr. Conway: Thank you.

The Chair: Mrs. Van Bommel, any questions or comments?

Mrs. Van Bommel: No, other than to say thank you very much for coming to the committee through the video conference. It certainly is appreciated, and it's an opportunity for us to have a bit of outreach into the rest of the province.

The Chair: Mr. Runciman.

Mr. Runciman: I'll add my thanks, Mr. Conway. Your testimony is in sync with the others of your profession, and what I said to the folks who appeared earlier: My concern is that you haven't taken the opportunity to comment on other aspects of this legislation. You mentioned in your commentary earlier that you're in a posi-

tion to advance the interests of your members and advance the administration of justice. One could reach the conclusion that taking the position you're taking is advancing the interests of your members. Whether that's fair or not, that's an assumption some will make, especially since you haven't taken this opportunity to take a look at other elements that deal with the administration of the courts, that deal with the appointments process for JPs, the educational requirements for JPs, the Limitations Act, the Provincial Offences Act—all very significant inclusions in this legislation. None of the law associations to date has seen fit to offer any advice or commentary with respect to those elements of the legislation. I think that's unfortunate, but thank you for your contribution.

Mr. Conway: If I may just respond, Mr. Runciman, I have half an hour. We will be following up with a written submission. We do have positions that we have formulated on some of those issues that you've mentioned; for example, the Limitations Act and so on. However, the point of my submission today is really to narrow in on the issue in Bill 14 that we perceive to be the most important.

I appreciate that you may say that my submission is in support of my members, and indeed it is. Perhaps you will say that you wouldn't expect to hear anything else from me. I suppose I'd say back to you, Mr. Runciman, that perhaps I wouldn't expect that you would support the bill, given your position as a member of the opposition. But I urge you to look closely at what is being proposed in this legislation because it is the first and best opportunity to do the right thing for the public, and that is the main thrust of my submission. Whether you choose to believe I'm doing it on behalf of my members or on behalf of the public is, frankly, beside the point. The point really is that this is good legislation in the interests of Ontarians, and I urge you to see that it passes. Thank you.

Mr. Runciman: I think I should make one comment: that being a member of the opposition doesn't necessarily mean you're going to oppose legislation. Both Mr. Kormos and I urged a stand-alone piece of legislation dealing with the issue of paralegals, but the Attorney General took the opportunity to throw in a whole range of very controversial items which make it a little more challenging for all of us.

Mr. Conway: I'll certainly accept your position, Mr. Runciman, and I'm sure you'll accept mine too. Thank you.

The Chair: Thank you very much, Mr. Conway.

ONTARIO ASSOCIATION OF SOCIAL WORKERS

The Chair: We have the Ontario Association of Social Workers next. They're the last presenters for today. Good afternoon, ladies. If I can have you identify yourselves for Hansard, you may begin. You have 30 minutes.

Ms. Joan MacKenzie Davies: Good afternoon. My name is Joan MacKenzie Davies. I'm the executive director of the Ontario Association of Social Workers. My colleague Beatrice Traub-Werner is a social worker in private practice. She will be speaking directly to quasi-legal services provided by social workers that we have concerns about related to this bill.

The Ontario Association of Social Workers is pleased to have this opportunity to respond to Bill 14. While OASW supports the intent of Bill 14, we believe that the proposed amendments place social workers who provide quasi-legal services under existing pieces of provincial and federal legislation at risk of contravening Bill 14. We value this opportunity to express our concerns about the potential negative impacts of Bill 14 and to highlight the need for revisions to be made prior to passage of this legislation.

OASW's concerns relate to amendments outlined in Bill 14, section 2, subsection (5) under subsection (10), which defines a person who is engaged in the provision of legal services. The definition is extremely broad and encompasses anyone who "engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person." Subsection (6) then proceeds to list a number of activities that are included in this definition without limiting the generality of the basic definition.

While Bill 14 anticipates that certain classes of practitioners, for example paralegals and law clerks, will be allowed, under the bylaws of the Law Society of Upper Canada, to seek licences from the law society to provide legal services, we wish to point out that activities performed by social workers that overlap the definitions in subsections (5) and (6) are not among those classes.

Furthermore, since social workers are currently regulated by the Ontario College of Social Workers and Social Service Workers, it would place an unreasonable financial burden on members of our profession who provide quasi-legal activities to seek licensing and regulation under another regulatory body.

Social workers provide quasi-legal services, as I've pointed out, under various pieces of provincial or federal legislation, and social workers have fiduciary responsibility to clients under regulations in the Divorce Act, the Mental Health Act, the Child and Family Services Act, the Children's Law Reform Act, the Health Care Consent Act and the Substitute Decisions Act.

Social workers are regulated under the Social Work and Social Service Work Act, and the scope of practice of social workers includes "the assessment, diagnosis, treatment and evaluation of individual, interpersonal and societal problems through the use of social work knowledge, skills, interventions and strategies, to assist individuals, families, groups, organizations and communities to achieve optimum psychosocial and social functioning."

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Ms. Beatrice Traub-Werner: My name is Beatrice Traub-Werner. I am a social worker in private practice.

Practising within the above scope of practice, some social workers will provide the following services that

appear to fall within the proposed definition of legal services, as outlined in subsections (5) and (6) under subsection 2(10). These services include:

- mediation and alternate dispute resolution, related to assisting opposing parties in disputes; for example, divorcing spouses who need to reconcile differences, find compromises or reach mutually satisfactory agreements. When we do this work, we work within the constraints of the Children's Law Reform Act and the Divorce Act. We need to know both of these pieces of legislation really well in order to be able to counsel our clients. Social workers are sometimes involved with clients who have been ordered by the courts to seek ADR to resolve disputes;

- parenting coordination and planning. Those are functions that are related to the development and co-ordination of parenting plans. They occur under the Child and Family Services Act, when children are apprehended because of abuse and/or neglect or emotional abuse. Also, in the cases of divorce and custody and access recommendations, clearly our recommendations have an impact on the individual rights of each of the parents and their families;

- custody and access assessments related to the provision of recommendations to the courts regarding issues of custody and access to children by parents, a very contentious issue. Social workers are involved very frequently with this work. Having to dispense quasi-legal advice is par for the course; and

- capacity and competency assessments, possibly one of the most difficult areas in our field. They're related to the client's ability to understand information in order to make financial decisions, consent to treatment, counselling, personal assistance services or admission to a facility, or the release of information. Social workers also appear before the Consent and Capacity Board. In this function, we need to be very, very cautious and understand the Mental Health Act and other pieces of pertinent legislation in order to counsel appropriately the people with whom we're working and their families.

Ms. MacKenzie Davies: In addition to our concern about the impact on social work services, we are concerned also about the potential negative impact on the public of overly restricting the pool of qualified professionals who can provide legal and quasi-legal services and the likely escalation in associated costs with the provision of these services should Bill 14 be passed into law without amendments. Ontarians deserve and require access to a range of affordable quasi-legal and legal services. Moreover, we believe that the public has the right to legal representation in court. We think it's worth noting that paralegal services gained momentum when legal aid funds were frozen.

In closing, our organization recommends the inclusion of social workers in the classes of practitioners exempt from Bill 14. We also believe that in order to ensure access to a range of required legal services, the solution is twofold: Funding needs to be increased to legal aid, and a licensing board needs to be established for paralegals which includes a definition of scope of practice.

We wish to thank you for this opportunity to express our views. Since it's the end of the day, we can appreciate that you probably have listened to a lot of presentations. Thank you for your patience and your attention.

The Chair: Thank you. Government side? Mrs. Van Bommel.

Mrs. Van Bommel: Thank you very much for your presentation. For you it's probably the end of a long day as well. You, among others, have come forward about this particular concern, and I do know, as you state in your document, that you are already a regulated profession and that you are governed by a code of ethics and practices. We will take all of these under consideration in terms of our work as a committee. Thank you very much for coming at this time of day.

The Chair: Mr. McMeekin.

Mr. McMeekin: There's no brief more important than yours today. Thank you very much. I'm actually a trained social worker who has never been a member of the association.

Ms. MacKenzie Davies: We'll get your address.

Mr. McMeekin: Although, as an MPP and a former bookstore owner, I probably did more social work in both contexts than I ever did as a paid professional social worker. But I appreciate the points that you've made—

Mr. Kormos: We'll let the college know that.

Mr. McMeekin: Yes, if I could qualify now as a member.

Just by way of a query, have you had any direct contact with the law society about any acknowledgement of a formal exemption? There have been some groups that have been in dialogue with the law society that have been given assurances by the law society that, if the legislation were to pass in its current form, without a clause exempting all those who otherwise might be regulated by some other piece of legislation, they would be exempt. I'm wondering if you've availed yourself of the opportunity to have some dialogue with them.

Ms. MacKenzie Davies: We copied the law society on a letter we wrote to the Attorney General and did receive a response. However, we did not feel it was a response that took our concern particularly seriously.

Mr. McMeekin: If I were a member of your association, I'd probably be on the floor, saying, "Maybe we should follow that up with some direct dialogue." For what it's worth, I just offer that advice to you.

Ms. MacKenzie Davies: Thanks.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you as well for your contribution. I think that last comment by Mr. McMeekin should be concerning to you. It's somewhat surprising and alarming that we're having testimony before us from the significant number of organizations that have been captured, supposedly inadvertently by this legislation—already regulated professions and industries. To rely on the good faith of the law society at some point to perhaps pass a bylaw exempting you I think should be cause for concern.

We have the ability in this committee and in the Legislature to ensure that you're exempted through an amendment to the legislation. I would hope, based on the testimony that we've heard from yourselves and others in similar situations, that government members would be more forthcoming rather than suggesting, "We're hearing what you say and, oh, by the way, you'd better call the law society and see how they feel." I'm bothered by that remark because I was starting to sense that the government members were coming along and listening to the testimony and that they were going to be receptive to the appropriate amendments to address this multitude of concerns that have come before us.

I simply want to thank you. I gather there was no consultation beforehand, before this legislation was tabled. It caught you by surprise; it caught you off guard.

Ms. MacKenzie Davies: Absolutely. I heard about it through one of our members who contacted me back in January or February. We had no idea. By that point, I think it had passed first reading. And our college had not heard as well, because I contacted them; we were caught completely unawares.

Mr. Runciman: It's becoming increasingly clear that this was an ill-thought-out initiative. Hopefully we can fix it as we go through this process. Thank you again for your contribution.

Mr. McMeekin: The difference, of course, is that our government chose to have hearings when previous governments would put legislation through with no hearings.

Mr. Runciman: Do you want to—

The Chair: Mr. Kormos.

Mr. Runciman: We can do it with you.

Mr. McMeekin: You opened it up.

The Chair: Order.

Mr. Runciman: I'll be more than happy to do it if you want to deteriorate into that kind of situation.

The Chair: Order. Mr. Kormos, you have the floor.

Mr. Kormos: Thank you very much. I appreciate the brevity of your submission. I've already mentioned you several times today. I've been waiting for you to come here, for a couple of good reasons. Your point is well made, and nobody, in my view, ever intended to regulate regulated social workers when the focus is on regulating paralegals.

I don't like the way the legislation is drafted. I don't think it's well drafted. I don't think it's a good way to write legislation because it depends upon those subsection (5) exemptions that the law society is going to determine by bylaw, not the Legislature.

Already one of the first issues that arose—because I'd been told about it and it struck me as being bang on—was the role of mediators. Of course, social workers are mediators as regulated social workers, but there are a whole lot of very, very capable mediators—Dr. Barbara Landau was here with Peter Bruer from St. Stephen's—who aren't regulated because they're not social workers.

Ms. MacKenzie Davies: Right.

Mr. Kormos: Just off the top of my head, a paralegal is a person who provides X, Y and Z services, whose

primary purpose is to provide legal services X, Y, Z and who is not otherwise regulated provincially or federally, maybe is a start. I don't know; far be it from me.

If you don't mind, I've been really interested in why there hasn't been more interest by paralegals—we heard from a very competent one today—in being part of the law society. I remember, back in 2000, legislation—the college of social work, right? Social service students in the community colleges were royally ticked off because they weren't part of this family. In the first round, the BSW/MSW social workers didn't want them to be part of the family. It was the exact opposite of what the case is now. You've got the Ontario College of Social Workers and Social Service Workers, right? Are there scopes of practice by the one group as compared to another?

Ms. MacKenzie Davies: Yes.

Mr. Kormos: Tell us, very briefly, can you? We haven't got much time.

Ms. MacKenzie Davies: The difference primarily relates to the ability to diagnose within the social work scope of practice: Social service workers would not have diagnosis within their scope of practice. They would be drawing on social service work knowledge as opposed to social work knowledge and their interventions would be of a social nature as opposed to a psychosocial nature—so, related to housing, a crisis within housing, very important issues, but they would not be going in and dealing with the—

Mr. Kormos: Community-based stuff.

Ms. MacKenzie Davies: Yes, community-based.

Mr. Kormos: Very important stuff. Was there a guarantee that social service workers wouldn't be outvoted on the board by virtue of overloading it with social workers as compared to social service workers?

Ms. MacKenzie Davies: No. In fact, there are 10,000 social workers and less than 1,000 social service workers, and it's equal numbers.

Mr. Kormos: Equal numbers?

Ms. MacKenzie Davies: Of social workers, social service workers and members of the public on the council.

Mr. Kormos: On the board.

Ms. MacKenzie Davies: Yes.

Mr. Kormos: Elected by?

Ms. MacKenzie Davies: They are elected by the memberships of the individual disciplines. So social workers elect seven members; social services, because their numbers are smaller, often their members are acclaimed as opposed to elected; and the public members of course are appointed.

Mr. Kormos: Was there a dispute resolution mechanism—that was raised, remember, by one of the commentators?—built into the structure in the event that the board was at an impasse?

Ms. MacKenzie Davies: I don't know if there is, but I think it is something that in recent years they have been looking at. Beatrice and I are observers. We go and observe their meetings. So my understanding is that they've perhaps considered that, but I don't recall that there was actually one initially.

Mr. Kormos: Thank you kindly. I appreciate your coming.

The Chair: Thank you for your presentation. Thank you, members, staff and everyone else, for your co-operation. That is the end for today. This committee is adjourned until 9 a.m. tomorrow.

The committee adjourned at 1634.

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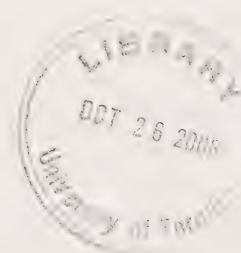
Access to Justice Act, 2006

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 14 September 2006

Jeudi 14 septembre 2006

The committee met at 0905 in room 151.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006

SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning. Welcome to the standing committee on justice policy. This morning, we are continuing our hearings on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006.

PARALEGAL SOCIETY OF ONTARIO

The Chair: The first presentation is from the Paralegal Society of Ontario. Good morning. If you could state your names for Hansard. You may begin.

Ms. Susan Koprich: Thank you. My name is Susan Koprich.

Mr. Johnny Powers: My name is Johnny Powers.

Ms. Nikole Bélanger: I'm Nikole Bélanger.

Ms. Koprich: Thank you very much, Mr. Chairman and the honourable members of the justice committee, for giving me this opportunity to wrap up the Paralegal Society of Ontario's position and to bring you the position of the public.

We are here very battle-weary. We have been told since the beginning to give up on this fight because the only person the government is likely to listen to is the Law Society of Upper Canada. My sister begged me numerous times to support this legislation because this legislation is not going to hurt me, and she does not understand why I have given so much to oppose the law society as our regulatory body. She has only seen what I have given financially, emotionally and physically to stand for what is right.

The paralegals and the PSO mirror my belief. Yesterday, one of my colleagues, whom I respect incredibly, was representing five paralegals out of 2,500. I have worked with these five closely in the past number of

years. She spoke about why she has not joined the PSO and why she is in favour of the law society. She stated that the only prerequisite for joining the PSO is errors and omissions insurance, and that we have no bylaws. It is unfortunate she did not research this. I am well aware we have bylaws. We also have a code of conduct that our members must adhere to, which we have researched based on the law society's code of conduct to make sure it was up to what is expected in the legal community. As far as having E and O insurance, there isn't a better way to keep the bad apples out of this organization. Good luck at getting E and O if you have had claims filed against you.

Yes, I am what you may consider a paralegal who will be safe with the legislation. Not only do I have an honours legal assistant degree, a B.A. from university and quite a few other years of post-secondary education, but I also already have my E and O and I practise strictly in the Small Claims Court, often representing lawyers and the big corporations. I have also been lucky to have a call-in radio show about the Small Claims Court. With the law society being the regulatory body, I still do not feel safe. I feel as safe as Avis would feel with Hertz regulating them.

I have been a member of the PSO for the past 10 years, and I have never been more proud to be a paralegal. I have known the members of the PSO very well—sorry if I'm a little emotional—over the years, and I have gotten to know them by being in reception at these meetings. I'm also very proud of all our members and often refer them to my own clients, to my family and to my friends. I even felt more affirmed in my belief and in our membership's belief when I sat in an MPP's office this week and heard a woman who I admire, who has practised in uncontested divorces for over 20 years without complaint, talk about how she will lose her career when this legislation is passed. I was also close to tears seeing a very close and dear friend of mine close to tears on the parliamentary steps speaking to one of the MPPs here, talking about how she's already lost 75% of her business because of a letter that she has received from the law society. This is what we've already come to see, and we know what to expect.

0910

Almost every practising independent paralegal with many years' experience who has come before you who is not a bencher of the law society has pointed out the conflict of interest by having the law society regulate

paralegals. As official spokesperson and director for the PSO, I want there to be no misunderstanding of our position. The honourable Mr. Kormos wanted to know exactly which side of the ledger to check for Mr. Parsons on the issue of self-regulation. I want you to know there is no equivocation.

As the largest organization, the PSO, working along with the PSC and having the longest history, can unequivocally state that we are for self-regulation and adamantly opposed to the law society. I will not waste time reiterating that our societies have covered the areas the government feels are necessary to protect the public. As far as the analogy of trying to herd cats, the better analogy is that there was a cat among the pigeons.

As a former member of the PPAO, I have a clear recollection of the dissolution of this organization, as I had the privilege of meeting the honourable Mr. Zimmer the next day. The PPAO was dissolved because the board members began advocating for the law society as the regulatory body. As a result, there was widespread dissent, and a motion was passed to dissolve the PPAO, as we felt those members who were on the side of the law society would compromise our position. We must remember that the PPAO is an umbrella group of all paralegal organizations, such as the PSO, PSC, ALDA and OAPSOR. We were all of one mind towards self-regulation until the law society intervened, and upon intervention, the PPAO was derailed.

If this legislative body gives us the teeth and the tools to demand membership, there would be no question that we could and that we should regulate paralegals. I've heard these members say that we've had over 20 years to do that, but without the authority from the government and the tools from the government, we were set up to fail.

We have been told by the Law Society of Upper Canada that they have consulted with over 80 stakeholders, but not once did they consult with the real public of consumers. It is my respectful submission that paralegals more closely reflect the needs and positions of the consuming public. As a result, I am here taking the liberty of rectifying that oversight by presenting two members of the public, a petition signed by over 1,500 members of the public, and 371 letters from the public. Believe it or not, these petitions and letters were all from one paralegal.

First, the members of the public: I have to my right Nikole Bélanger, a woman who has used paralegals and who represents many women out in the public. I also have Johnny Powers, whom many of you may recognize either from the business community or as a former professional wrestler. I'd like to start with Ms. Bélanger.

Ms. Bélanger: Good morning, Mr. Chair and everybody on the committee. My name is Nikole Bélanger. I'm the founder of the Women's International Network. It's a not-for-profit organization that consists of a collective and online network dedicated to the advancement and success of women in their professional, personal and spiritual lives. It serves as a provider of diversified services and information by fostering com-

munication between women of all races, backgrounds and spiritual beliefs.

Our networks are women who wish to take responsibility for their own personal and professional welfare. In addition, they are willing to give back what they gain from being a part of the group. It is for women seeking to leave a legacy, to mentor a younger generation of women, and to gain the fellowship of other women within an environment of mutual support and growth. This organization fosters communication and friendship with all women.

This is why I'm here today, because some of these amazing women paralegals are just exercising their knowledge and services with all of the women who come our way every day at WIN for advice, help, and to take their case that otherwise no one would. Basically, that's what it is, because, you see, we talk about equality yet we are still far from it, meaning that most of the women who come our way are in no shape or form to pay for the services of lawyers, but God bless the competitors who will take their cases and won't make them feel like a second-class citizen and helpless.

In all fairness, it's not because all lawyers would do that, but they have such a huge amount of overhead and fancy cars that they couldn't take three quarters of the cases that we have at WIN. That's the reality, because women who stay home can't pay the fee, but can maybe scratch a loan from a family member for the budget needed for a competitor. It's as simple as this: It comes down to numbers, leaving them with the feeling that yes, indeed, it can be possible to receive help and services without jeopardizing their sense of pride and knowing that they can take action to better their lives, because some of them are going out of a marriage, divorce, separation, child custody, you name it. We have multiple cases and we need to help them to go through their endeavour and come out of it proud.

I can tell you that is why I do what I do. I've had my own set of personal challenges. I'm originally coming from Montreal; I'm sure some of you already figured this one out. When, nine years ago I went through my own high-profile divorce case, because I didn't know anyone who could direct me, I had to look and find lawyers in the Yellow Pages. Two years later, when I finalized with the lawyers, I had to pay close to \$85,000 of bills. When I asked one of the women lawyers where I should go from there—because on top of that, because I didn't know anybody in the city yet, I didn't even gain a fair settlement from all that for my children with what I know now—she answered me, “Well, Nikole, there's always the women's shelter,” which I went to.

Four years later, I was back on my feet and had a house built for my children and I. Just to complicate things a bit, I was hit by a van—I mean, go figure this one; this is unbelievable—and left with quite extensive injuries. The contractor heard about the delay of my moving to the new house and he left; he disappeared. So when I arrived there, it had no kitchen and no bathroom. I had to hire a lawyer. This lawyer took the case, but in the

end he couldn't take any recourses to win the case, yet I had nowhere to go. I had to sell the house because the money was not there anymore to carry the mortgage and everything and the fee of everybody.

The night before the closing of the sale of the house, I was confronted with such a high bill from the same lawyers who took my case and referred me to the notary that altogether, with the real estate agents, it was not enough money to close the deed of the house. So the agents, who were two women, were good-hearted and good-souled and removed their commission, and we were able to close the selling of the house.

In the meantime, the landlord from where I was living before, because I had to overstay a bit due to my injury, was suing me for overtime following my car accident due to lots of tests and physiotherapy, okay? We're going there. But then I met a woman who was a paralegal. I didn't know anything about it and inquired and searched and found out that she was ready to take my case. I retained her services to help me to create a win-win situation with the payment. She was able to reasonably work a settlement that was, at the time, achievable, and I thank her for it with all my heart—all this on a reasonable budget that I was able to sustain.

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On top of this hard time, one of the women who did some writing on a volunteer basis for WIN changed her mind about adding dollars to her volunteer work when she heard about the sale of my house. She thought she was going to make a killing with me. There was nothing left. So I had to hire a competitor again.

The lawyer firm said in an interview I watched on TV last Wednesday, I think, that he was serving small business and the individual. Still, I couldn't even afford one of these legal firms. Again, I called a competitor who indeed won my case, and in two or three payments, I was able to pay her bills. How thankful do you think I was?

I am here today because these women were there when I needed them personally, and they continue to be there for all the women of WIN—close to 2,500. They're all amazing. Every day, I receive emails with case after case who need their help, their guidance, and if you're thinking of adding restrictions and reducing the power and knowledge of the competitor, which they would be exercising for the love of their profession, with conscience, I plead all of you not to. We need those paralegals.

Bill 14 has some ground but needs lots of amendments to rebalance the fairness of their practice, some of them with more than five years of dedication and having the trust of all of us. It would be a crime to the women of WIN and all the public, because this is my direct input. I'm just one of them at this time. I preach for my constituency and what I stand for—women—that they have and should be able to continue to retain the service of the competitors, which in any other circumstance would be able to pay the fee of a lawyer.

Trust me. I went there, been there. That should be my right to do so. Regardless of what lawyers are saying and

claim, it's no comparison on their fee basis, on their overhead and fancy staff that they can help me in my bracket of income. Please, I beg today that you take this plea in consideration. I'm a member of the society to have the possibility to have a voice and to be able to retain the service of a competitor with no strings attached.

Thank you for listening to me and all the women I represent today.

Ms. Koprich: This is Mr. Johnny Powers.

Mr. Powers: Thank you for allowing me to come and speak about some of my friends.

My background: For 25 years, I was a professional prizefighter. I fought in 27 countries. In the last 20 years, I've been a television producer and small-business person, and I've had many occasions to use paralegals to effect transactions, contracts, paperwork and the like, and found them unbelievably competent, serious-minded people. Most of them I work with are females. That having been said, I actually like females more than males. Males I fight with, compete with, and I never allow myself to win with a female, because it has dire consequences.

That having been said, I've come to plead a case. I plead with you not to pass this bill, Bill 14, as it exists. I'm sitting here partially because I have a friend of 10 years—I happen to be in the same office—and she is not here today out of fear. It's not nice in Canada to have fear. She's not here speaking on her own behalf because she's afraid of the consequences. She received a letter from the law society to cease and desist. She was picked out for whatever reason, and she has concern, and I have concern for her, too. She's at an age and stage where she'd like to go back and forth across the border, which gets tougher all the time. Nobody wants some kind of mark on their record that gives somebody at the border an excuse not to allow you to go across. She has been a paralegal for over 10 years. She has helped me, personally, as a small-business person, many times. I've seen her clients. They're not the well-heeled. They're not folks who can take care of themselves. There are many times I can financially and in other ways take care of myself; a lot of people can't.

Unless I'm confused—and I'm not trying to just do little polemics here—government is of the people, by the people, for the people. Most people are working-class people and most people who are disadvantaged are the ladies or the female side. They're economically disadvantaged. They're professionally disadvantaged. The paralegals that I know—and I know maybe five or six or seven close at hand and a number through various meetings—are ladies helping ladies, women helping women. You males—and there are more males here than there are females—I would respectfully request that you pay attention to this. This affects the livelihoods of not just the paralegals but the economic livelihood of your constituency, the ones who don't have the means to fight for themselves, to defend themselves with lawyers. I have lawyers as friends, and I have lawyers as people I hire at various times. I have lots of respect for intelligent, well-thought-out legal presentation. That's not the issue here.

The issue here is freedom: freedom to choose, freedom for the folks who don't have the means to have an opportunity to get it done.

Now I'm going to read from something that a friend of mine prepared, because he's much more articulate than I am and it presents the case well, as I see it.

"Paralegal concerns with Bill 14: In its ongoing opposition to Bill 14, the Paralegal Society of Ontario (POS) emphasized the numerous concerns expressed by both paralegals and non-paralegals to the standing committee on justice policy.

"Most notably, the POS noted that paralegals have been in favour of self-regulation for a number of years"—and I know this for a fact; I've been around some of their meetings—"and has been working toward that goal. Using the example of the currently self-regulated real estate industry as a guideline, one of the objectives under review is a requirement to have members take courses on an ongoing basis to upgrade and update their skills on a regular basis.

"Existing paralegals with considerable expertise in specific fields based on years of work for the public, hone their skills as conditions and regulations change. Additional course work would enhance their abilities and usefulness to the public"—the public, ladies and gentlemen—"even more, and would be welcomed by the membership.

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"As proposed, the legislation raises more questions than it attempts to answer. Most notably, the legislation raises the issues of:

"—Where is the defining line between what the paralegal profession does and can do?

"—Why are there no guidelines for grandfathering established paralegals laid out in the legislation?

"—Why have the recommendations of the Cory report been ignored completely, especially the finding that paralegals should not"—I emphasize not—"be regulated by the law society?

"—Wouldn't it make sense to use the self-regulation model implemented for the real estate industry as a template for the paralegal industry?

"Paralegals have been, and are, providing a valuable and needed service to the public and, for the most part, they are doing it competently ... and the POS," the Paralegal Society of Ontario, "is working to improve the standards on an ongoing basis.

"The Canadian Bankers Association, actuaries, OPSEU and the used car dealers all have expressed dismay that their activities will be caught up in Bill 14 and they will potentially be subject to regulation by the law society. While the law society and the Attorney General have insisted that all of these people will be exempt and are not intended to be caught up in the definition, they legitimately ask why the Attorney General is giving the power to the law society to potentially regulate them instead of establishing the guidelines in the Legislature.

"The members of the public who most use paralegals are single parents, women, ethnic groups, the disabled,

minorities, immigrants, fixed-income seniors and struggling businesses ... the ones who cannot afford a lawyer's services" in the main.

"Bill 14, the Access to Justice Act, is actually just the opposite, because it will prohibit all non-advocacy paralegals, leaving the working poor without an opportunity to choose the level of legal services they require for simple paperwork matters.

"Bill 14 should not be passed by the Ontario Legislature because it is an obvious conflict of interest to have lawyers regulating paralegals. What other profession is allowed to regulate its competitors?

"It is untrue that paralegals are uninsured, unregulated and undisciplined, as all members of the Paralegal Society of Ontario are required to carry errors and omissions insurance, are subject to a code of ethics and can be reported to a discipline committee, meaning that they are held accountable and the public is protected.

"It is unfair that the law society, which will regulate paralegals under Bill 14, will not even suspend prosecution of non-advocacy paralegals for the unauthorized practise of law while these hearings are taking place, yet expect paralegals to negotiate with them in good faith.

"It would be a great disservice to the public if Bill 14 is passed and the paralegals who are currently doing simple incorporations, wills and powers of attorney, simple real estate matters and uncontested divorces are forced out of business in accordance with schedule C of this bill.

"Paralegals have a self-regulation plan in place and could be self-regulating within a couple of years, if given the chance to do so.

"The paralegal profession has been providing the public with timely, useful, cost-effective services for a number of years. As structured, Bill 14 will eliminate or criminalize a number of those services, leaving many of the public without service.

The Chair: One minute left.

Mr. Powers: In conclusion, "[I]nstead of seeking to eliminate services to the public, the eventual legislation should work to encompass and enhance the new realities of life in the 21st century in a world where paralegals regulate themselves alongside, not underneath, lawyers."

Thank you very much for your attention.

The Chair: Thank you for your presentation. Your time has been completely used up.

POINTTS ADVISORY LTD.

The Chair: The next presenter is Mr. Brian Lawrie of POINTTS Advisory Ltd. Good morning, Mr. Lawrie.

Mr. Brian Lawrie: Good morning, ladies and gentlemen. For the record, my name is Brian Lawrie. I'm founder and president of POINTTS, the traffic ticket specialists.

I can't help having a feeling of déjà vu, because almost 20 years ago I sat in this very room in front of this very committee, with different members of course, supporting Bill 42, which was an act to regulate paralegals.

Strangely enough, the law society would have been the governing body at that time, had it passed.

I come here today to speak in favour of the proposed legislation with the following provisos: I feel that the act itself has to be more specific. I would like to see more in the act, such as the definition of a paralegal; the permissible areas of practice of a paralegal; the penalties for non-compliance for a paralegal. This would assist by providing a clear and ready reference for both paralegals and the public, rather than them having to track down law society bylaws to find out if there have been infractions.

I would like it see the bill use the word "paralegal." Nowhere in the bill does the word "paralegal" appear. I feel it is imperative that we continue to use the word to describe these individuals who will be practising. The word has been used for decades and is well known and understood by the public at large. For example, everyone knows a paramedic can provide some medical services but is clearly not a doctor. They can understand from that that a paralegal can provide legal services but is certainly not a lawyer.

In support of this, a recent Google search on the words "paralegal," and "paralegals," returned an amazing 30 million hits. These numbers speak for themselves. People are well aware of what a paralegal is. I think that to impose phrases such as "licensed to practise law" and "licensed to provide legal services" to describe lawyers and paralegals can only cause confusion, especially with those citizens whose first language is not English and who are arguably the most vulnerable to being misled.

I fail to see any reason or advantage in not using the word "paralegal." It has been used by governments, judges, lawyers, journalists and citizens for many years, and I'm sure that it will continue to be used even after the act comes into force, causing further confusion.

The law society's report to convocation dated September 23, 2004, contained a consultation paper entitled *Regulating Paralegals—A Proposed Approach*. This addresses, among other things, the governance structure and, in particular, the paralegals standing committee of convocation. It states that convocation may not veto a decision of the standing committee the first time it is presented. The convocation may veto the decision when it's presented a second time.

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I would like to see the act address this proposal because, if it is adopted, paralegals will have grave concerns that in cases where the decision of the committee disadvantages or impinges on lawyers, the veto may be used to the detriment of the paralegal. I would suggest that the act should set out and contain an arbitration process to deal with such circumstances.

It is also proposed by the law society that a person may be grandfathered and licensed if they have worked as a paralegal for three of the previous five years. I would like to see that changed in the act to allow for someone who does not meet that criterion to challenge the exam without having to take the two-year college course. This would allow people such as police officers and provincial

prosecutors to act as agents for the Attorney General, to cross over, so to speak, much as crown attorneys have been allowed to do when they move to the defence site.

Subsection 63(1) of the bill requires a review period of five years. Because the act is novel and is going to be contentious among some paralegals who are concerned that the law society will not administer it fairly, I would ask that there be a preliminary review no more than two years from the implementation date and a full review at four years.

Dealing with trust accounts, I would ask that the act include a provision for the establishment of trust accounts and, when it does so, that they are permitted to be phased in over a period of approximately three years. This is because many paralegals use client fees as operating capital and, without a phase-in period for trust funds, irreparable harm will be caused to them and their business.

Moving on to schedule E of the act, which will allow witnesses to give evidence by electronic means, when I first heard about this proposal, it immediately conjured up a mental image which I trust you will allow me to share: A man in Scarborough gets a 17-kilometres-over ticket and has to appear in night court at Old City Hall in January. He drives through a blizzard, pays for parking, trudges through the snow to the courthouse and waits for hours for his name to be called. The court clerk makes a phone call to the police officer at home. He puts down his coffee, puts the hockey game on mute and then gives evidence. That's the picture I have of this electronic evidence.

It goes further, because I feel that it flies in the face of the fair and impartial administration of justice and everyone being equal before and under the law. All cases are decided on credibility and one of the most important indicators of credibility is demeanour. This cannot be considered if evidence is given over the phone or when the person is talking to a camera. This is a dangerous departure from the system of justice which has served us so well for hundreds of years. A person's right to trial cannot be infringed or impaired on the basis of convenience, expediency or revenue-gathering.

These are my respectful submissions, and I thank you for allowing me the time. I'll be pleased to answer any questions.

The Chair: Thank you, sir. About seven minutes for each side, and we'll begin with Mr. Runciman.

Mr. Robert W. Runciman (Leeds-Grenville): Thank you, Mr. Lawrie, for your presentation. You were here for the preceding presentation from the paralegal society. Are you a member of that organization?

Mr. Lawrie: No, sir. I'm not a member of any organization.

Mr. Runciman: And never have been?

Mr. Lawrie: That's right.

Mr. Runciman: And your area of practice is confined to dealing with—

Mr. Lawrie: Strictly provincial offences matters, traffic tickets.

Mr. Runciman: I think you had some excellent suggestions that you've brought forward for refinement and improvement of the legislation. You talked about a preliminary review after two years, followed by a full review. How would you define a preliminary review versus a full review? I'm not quite sure what you mean by that.

Mr. Lawrie: A preliminary review could be done by merely canvassing the paralegals who are involved in it and perhaps the law society itself to see if the thing is actually on the rails at that particular time and that it's actually moving forward. The full review later on could be a full audit and everything else that would go with a full review.

Mr. Runciman: If a preliminary review discovered significant problems, it could blossom into a full review at that point in time. I guess that's what you're suggesting.

Mr. Lawrie: Yes, and if they're minor problems which could become bigger problems, then the preliminary review would be there to actually sort them out, hopefully.

Mr. Runciman: You talked about using the term "paralegal" in the act. Yesterday we heard from one of the law society's county law associations. Both of them have referenced this, that they feel it's important to not use that term, that it causes confusion among the public and they don't understand. You're giving us a different view of that. What do you think it is? Is this just simply a difference of opinion or are there other things at the bottom of this?

Mr. Lawrie: It surprised me when I first saw it because I just assumed that since judges and everybody else has been calling them "paralegals," and all the reports—the Justice Cory report was on paralegals and the task force on paralegals report was on paralegals, and all of a sudden out of nowhere comes this other way of describing it. I don't understand. It can't just be for the ease of the public; it's got to be for something else, and I'm still wondering what it could be.

Mr. Runciman: If one were a suspicious soul—and we've heard lots of testimony here over the past couple of weeks about regulated professions who are being captured by this legislation. Some are suggesting there are unintended consequences, but maybe that's not the case. I could suggest to you that by doing away with the term "paralegal," it may expedite or make it that much easier to capture people who currently aren't looked upon as paralegals and are self-regulated in most instances.

Perhaps you don't have a view on this. We heard from someone yesterday who's focused in Small Claims Court who supports the legislation, with some changes. You're focused on POA. We've heard from folks who are concerned about family law, as an example, where a lot of men are going into family law courts now—divorce, whatever it is—can't afford a lawyer, unrepresented in many situations. Do you think there's a role for paralegals in some of these other areas that are going to be perhaps shoved off to the side now?

Mr. Lawrie: I don't know exactly what they do, but personally I think that the test for what a paralegal should be doing is that if the service is delivered in front of an independent third party—when we defend a traffic ticket, there's a justice of the peace there to basically monitor the competence and capability of the individual. If the person appears in front of a tribunal where there's somebody there who listens to it, then I think there is a place for paralegals in those sorts of arenas. Where the paralegal business takes place in an office, say, like where papers are completed and there is no supervision or direct supervision, then I would have difficulty with that.

Mr. Runciman: Have I got a few more minutes?

The Chair: Yes.

Mr. Runciman: I wanted to touch on another element of this legislation. Since you're here and you deal with the POA, there are some changes here reflecting JP appointments and qualifications and so on. Perhaps you could give us a bit of an insight from your experience with respect to what problems you're running into in terms of the shortages of JPs.

I've long been an advocate of re-establishing a corps of per diem JPs who meet the necessary qualifications because I know from policing feedback that I've had over the years—I think it's been improved somewhat with this videoconferencing telewarrant system, but there are a lot of challenges in getting a warrant or a bail hearing at 2 or 3 o'clock in the morning on a Saturday evening or a Sunday evening now that we have a salaried JP staff. Having a corps of per diems—I know they're talking about using retired JPs for this per diem, but I'd like to see it expanded beyond that. Maybe you can talk a bit about the situation you and others are facing dealing with the POA and the shortage of JPs and how we could address that.

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Mr. Lawrie: Well, the shortage of JPs delays trials, of course, for a considerable amount of time. In the main, a person doesn't really care because the longer it takes the better. They don't want to pay the fine or whatever, so they're quite happy with it. But in some cases, particularly accident cases, where a person was, say, charged with careless driving, the insurance companies have been known—and I believe most do—to levy a premium just on the charge; they don't wait for the conviction. So the premium increase can be substantial. In fact, it almost amounts to a licence suspension, because people can't afford to pay it. So the citizen has to wait that length of time to be able to recover the money. But I find—

The Chair: Thank you very much. Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Finish your response.

Mr. Lawrie: So that's one of the difficulties. The other one is the length of the list. A citizen will turn up there and they will be 34th on a list in some jurisdictions in Ontario. Well, you know that your case isn't going to be heard, so you've got to come back again, and it would have been nice to have been told in the first place—all of that sort of thing. It's just a lot of irritation, and I think

the solution is to have—whether it's per diem JPs or just more full-time JPs, but certainly they're required.

Mr. Kormos: Thank you very much, sir, for coming here. You are indeed the patron saint of the paralegal profession—

Mr. Lawrie: For my sins.

Mr. Kormos: Notwithstanding perhaps any sins, but your litigation paved the way for the paralegal profession to develop here in the province. I'm a fan of POINTTS. Down where I come from, Bruce Scott has been an outstanding—

Mr. Lawrie: That's correct.

Mr. Kormos:—just a tremendous litigator in provincial offences court. Mickey Parker, who started independently, is working with him now. I referred stuff to these folks many years ago when I practised law and, believe it or not, people still come into our constituency offices with provincial offences tickets and I refer these folks to POINTTS down in Niagara today.

Mr. Lawrie: I must confess to you, sir, that several times I took lessons from you when you had a case ahead of mine down in Welland, back in 1988, 1987.

Mr. Kormos: I was counsel, I presume.

Mr. Lawrie: You were counsel, yes.

Mr. Kormos: Okay, thank you. I wanted to make that very clear.

I'm pleased that you're here. You support the law society's proposed role as regulator of paralegals.

Mr. Lawrie: I feel that they are the only agency presently able to do it, and it has to be done, because the regulation is long overdue.

Mr. Kormos: But you also express concern about permissible areas of practice, as you put it—I think "scope of practice" is the language we've been using here—because it's not articulated in the legislation. That's what seems to be causing concern among people, for instance, who are advocates in the Family Court, a forum which—and I appreciate your interesting and very capable definition about how, when paralegals are working in a forum where there is supervision by a tribunal, an arbitrator, a judge, a JP, it's a different climate than doing solicitor work in the office.

If we don't have, in the context of the bill, the authority as legislators to define the scope of practice, how, then, can paralegals like those who advocate for appearing on behalf of Family Court litigants have any security about being permitted to do that in a regulated environment? That's one of the problems, isn't it?

Mr. Lawrie: That's the problem, because it should be set out clearly. The private investigators act is pretty comprehensive as to what a private investigator can and can't do. If the bill becomes an act, it should be more in line with the makeup of that private investigators bill, because it's all set out. A member of the public can go on the Internet and see the thing from A to Z without seeing some parts here and then having to go look at bylaws some place else to find out what applies and what doesn't apply. It just would make it simpler for everybody and it

would make it safer for everybody too, because people would know.

Mr. Kormos: One of the interesting things, of course, is that barrister-and-solicitor type of licensees are going to be permitted to be members of the law society; legal service provider licensees—I think that's the language; paralegals—are not going to be permitted to be members of the law society. Is that an issue as far as you're concerned?

Mr. Lawrie: No. It hasn't been an issue of mine, and I don't see that it would become one. As long as we are actually in a position where the paralegals have some say in what goes on with the paralegal committee, then I'm willing to trust the law society that they'll conduct this thing properly.

Mr. Kormos: With respect to any number of paralegals, I suspect that most people on the committee are not convinced that the paralegal community is sufficiently united to immediately embark on self-regulation—immediately embark. The difference with real estate people, for instance, is that they had been regulated by the government before they became self-regulated.

I appreciate your views about the law society. Would you similarly consider as an option the prospect of government regulation as a way of developing a regulated body with paralegals which could then move on to self regulation? Because, as I say, real estate people were regulated, car dealers were regulated, before they became self-regulated. Is that an option that would be viable for you?

Mr. Lawrie: One of the proposals that I did make to Justice Cory at the time was that the Ministry of Consumer and Commercial Relations, I believe it was then, had the set-up there to be able to administer a paralegal organization. They have the investigative arm and they have the enforcement arm, with the OPP attached to them. That would be direct government supervision of legislation. I would see that that would work. Here, of course, with Bill 14, we're presented with the law society, and also the urgent need for regulation.

Mr. Kormos: I think we all agree that there's some urgency. Thank you very much.

Chair, you should know that Mr. Lawrie has saved me many a speeding ticket because, as often as not, it's usually Sunday afternoons—you're on CFRB from time to time—

Mr. Lawrie: That's right.

Mr. Kormos:—and I'm on the highway, right? I actually reduce my speed to a manageable level so I can listen more carefully to the traffic ticket specialist on CFRB.

The Chair: The government side. Mr. Zimmer.

Mr. David Zimmer (Willowdale): Thank you for attending, Mr. Lawrie. I share Mr. Kormos' views that you're a pillar of the paralegal professional community and one of the founders of the paralegal movement.

Mr. Lawrie: Thank you, sir.

Mr. Zimmer: I noted your comment on the question of the law society as the regulator and I made a note of

your comment. You said that the law society is the only present agency capable of doing it—that is, regulation—and it is necessary. My questions are two: (1) Why do you feel that the law society is the only present agency capable of doing the regulation, and (2) Why do you feel the regulation is necessary?

Mr. Lawrie: I feel it's the only present agency because that's what we're being presented with here in Bill 14 that's before us.

As far as the need for regulation, at the very back of that piece of material I gave you there's an ad which could give an example of why we need regulation, where a delivery driver fights two of his own tickets and is successful and now has offered himself to the public, for money, to defend them.

The regulation aspect of it has to define, as I say, the paralegal who cannot be a paralegal—for instance, disbarred lawyers and people with criminal records. There is no prohibition on those people becoming paralegals right now. Being able to run a stable business, to have funds in the business, to be properly incorporated, that sort of thing; to have the errors and omissions insurance, which most have but some don't; to be able to protect the public and ensure that—supposing a member of the public goes to one of these paralegals who says, "Your money back if we don't win." As has happened, they've gone there, and the money's spent already and you end up in Small Claims Court trying to get the money back. So the regulations would stop all of this.

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Mr. Zimmer: Let me just follow up on the agency question, then. Your comment was that the law society is the only present agency capable of doing it. Another agency we've heard from is the PSO. Why have you made the comment that the law society is the only present agency, as opposed to the PSO or indeed any other agency that might be out there?

Mr. Lawrie: Paralegal agency, you mean?

Mr. Zimmer: Yes.

Mr. Lawrie: I feel that the paralegal community is too fractured actually to bring it together overnight and put it together as a self-regulating bunch. I think it's not mature enough as a profession yet. Up until now, nobody's even defined "paralegal." This is what we're hoping the bill will do. When somebody went for errors and omissions insurance—and we were the first to get errors and omissions insurance, personally, at Encon—

Mr. Zimmer: If I may, can you elaborate on your comment that the paralegal community is a fractured community?

Mr. Lawrie: Well, yes. There are a number of associations out there, four or five, but they come and go. It was 22 years ago that I started POINTTS. It was about two years after that when I got involved with the law society. So 1987 was when it was legal for me to do what I'm doing. So you're looking at that amount of time, 19 years, for a homogeneous body to be formed, and it hasn't happened.

I feel that if there is a regulating agency—if it's the law society, then it's the law society—there is time spent

with them so they can learn how to be a self-regulating body, as opposed to doing it on the fly.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you for a very succinct presentation. One of the things that kind of caught my attention was your image of the electronic evidence. I come from a very rural riding, and officers in my area are very efficient in covering a lot of kilometres, but whenever they have to go to court, they have to leave the jurisdiction. In the north, it's even worse.

One of the things I saw this doing is a solution to that whole problem of officers being gone for a day or more at a time from their jobs, when they could be serving the public in a much more effective and efficient way. So when you say sitting in his home, drinking his coffee or whatever, it just seems a little different from what I envisioned when I saw the whole concept, because I hear from police officers who complain to me about the fact that they have to leave and are gone for so long to give evidence at courts, and sometimes they get there and have to go home again and come back another day. It's a real frustration for them.

Mr. Lawrie: I used to have that frustration when I was on the police force myself, many times, but that was one of the things that came with the job, actually.

Whether or not they're going to do electronic, if there's a necessity for it, like bail hearings, you don't want to be dragging these guys over from jail for two minutes to stand and get told they're not getting bail; so to do it that way. If it's a rural community which doesn't carry a heavy caseload and the communication is between the police station and a courthouse and it's not going to inconvenience everybody else, I could see that it may work there, but I can't see it working in a place like city hall or any city court or any court which carries a heavy caseload.

The Chair: Thank you very much.

POLICE ASSOCIATION OF ONTARIO

The Chair: The next presenter is Mr. Bruce Miller from the Police Association of Ontario. Welcome, sir. You have 30 minutes and you may begin.

Mr. Bruce Miller: Thank you. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities.

The Police Association of Ontario is a professional organization representing over 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police. The PAO is committed to promoting the interests of front-line police personnel, to upholding the honour of the police profession and to elevating the standards of Ontario's police services. We've included further information on our organization in our brief.

The need for legislative change in the areas covered by Bill 14 has been a matter of discussion for a number

of years by many interested groups. We appreciate the opportunity to provide input into this important process.

As you know, the proposed legislation covers many areas, some of which are outside of our area of expertise. We will be commenting on two specific sections: (1) reforming the justice of the peace system and (2) the proposed amendment to the Provincial Offences Act that would permit witnesses to give evidence by video, audio or telephone conference or other electronic means.

We would like to congratulate the government for moving forward with reforms to the justice of the peace system. As you know the proposed legislation would:

(1) Establish minimum qualifications for justices of the peace, requiring a university degree or community college diploma or an equivalency, including life experience and at least 10 years' work experience. The PAO believes that adequate qualifications are critical to ensure the public's confidence in the system.

(2) Establish a new justices of the peace appointments advisory committee, making the appointment process more open and transparent and incorporating community and regional input into the appointments process. We believe this will help to ensure that Ontarians continue to have confidence in the administration of justice.

(3) Expand the powers of the Justices of the Peace Review Council to allow it to conduct hearings and make dispositions, including recommending removal to the Attorney General. We believe that this would improve the justice of the peace complaints and discipline process, making it more effective. We believe that justices of the peace are an important part of Ontario's judicial system and as such should be subject to greater oversight than currently exists.

As a parallel, our association is on record as supporting civilian oversight of policing. Police personnel are currently subject to rigorous public oversight. We have been and continue to be actively involved with government and other stakeholders in discussions on how to improve Ontario's police complaint system. As an association committed to excellence in policing, we are always willing to participate in a process that ensures that all Ontarians have faith in their police service and the system of civilian oversight. The PAO believes that an effective and transparent public complaints system must satisfy reasonable members of both the public and the police communities. We believe that these same principles should apply to justices of the peace and that the proposed changes should be implemented.

(4) Finally, allowing retired justices of the peace to continue to serve on a per diem basis. There is a serious ongoing shortage of justices of the peace in the province. This shortage has the potential to compromise community safety. Police officers often face unnecessary and lengthy delays in obtaining such things as search warrants. We believe that this provision would offer much greater flexibility in scheduling, particularly in those areas where there is very high volume and demand. A per diem justice of the peace would also be able to fill in to cover vacations, illnesses, parental and maternity leave,

where the local courts are not in a position to cover those vacancies.

We would also like to take the opportunity to comment on the proposed amendment to the Provincial Offences Act that would allow witnesses to give evidence by video, audio or telephone conference or other electronic means. This would allow police officers to provide evidence from locations outside of court, allowing for a more efficient use of their time.

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I think everyone around this table understands the increasing demands that are being placed on police resources. Last November, we released a public opinion poll that we commissioned across Ontario from Innovative Research Group. The complete poll is available on our website. Some of the highlights from the poll are the following: Over half of Ontarians expect that they or a family member will have property stolen as a result of a break-in within the next five years; more Ontario residents than a year and a half ago feel that they or a family member will be physically attacked in the next five years—that was up six points to 32% from a poll we did a year earlier; an overwhelming majority—80%—say that gun violence has worsened in the past five years; and finally, almost three in five Ontarians believe that community crime has increased over the past five years.

The PAO will be appearing before the federal standing committee on finance in the next few weeks to urge the federal government to move forward with their commitment to put at least 2,500 more police officers on the beat in our cities and communities and that sufficient funds should be budgeted for that purpose. We also believe that Ontario should be given its fair share of the funding for new officers based on its population base and that those officers must be distributed to the Ontario Provincial Police and to Ontario's municipal police services.

Certainly we feel the use of videoconferencing for officers testifying is a step in the right direction and will help to free up valuable resources. We note that the complexities of these issues will be covered off by regulation, and we would offer our assistance in developing these with other concerned stakeholders.

In closing, we'd like to reiterate our support for the legislative changes that we've highlighted and would ask for your support in moving this forward. We would like to thank the members of the standing committee for the opportunity to appear before you once again and for your continued support for safer communities. We would be pleased to answer any questions that you may have.

The Vice-Chair (Mrs. Maria Van Bommel): Thank you, Mr Miller. We have 23 minutes for questions. I believe the government side has the lead on this rotation.

Mr. Zimmer: Thank you for your thoughtful submission, as usual—careful, helpful, all of those good things. One of the things you've commented on is the use of videoconferencing for officers. You say that's a step in the right direction. I think you were sitting here when the previous witness commented on that issue of police officers giving their evidence on video. He painted this

picture of a night court, a traffic court, and somebody calling the police officer at home, who puts the hockey game on mute and is enjoying a cup of coffee with his feet up, giving his evidence. I'm assuming that officers receive training on how to present evidence on video and are drilled on the special requirements for giving that kind of evidence. Can you comment on that?

Mr. Miller: Certainly, in regards to specific video testifying, there is training on how to testify in court, because for new officers it's a new procedure. Just commenting on some of the remarks I heard previously, many times when police officers testify on provincial offences matters, credibility isn't an issue. Many times officers are just there to give factual information: They may have investigated a traffic accident, they may have taken measurements. The defence has no questions of the officer.

I note that the complexities of this issue are going to be covered off in regulation. I'm sure that's one of the issues that will come up and that needs further discussion. It's certainly a step in the right direction. We have officers sitting routinely in court for three, four hours waiting to testify in a very minor matter, where they aren't questioned by the defence. Credibility isn't an issue. They just give some factual information. It may have been a measurement, it may have been an observation. Certainly in those cases it makes nothing but sense. I believe Mrs. Van Bommel commented that many officers are travelling great distances to go to court as well.

Mr. Zimmer: Presumably you could have a police officer who is required to give some evidence on measurements or some technical evidence and, rather than having him sitting in the body of the court for three or four hours, he could be out in the patrol car doing police work and get a call from the dispatcher to come into the station to stand in front of a video camera, give his evidence for a few minutes, and get back in the cruiser and continue on with his policing duties.

Mr. Miller: That's right. The reality is too that many times matters aren't contested. The defence is just waiting to see if the witnesses show up and then a guilty plea is quickly arranged. It would certainly reduce a lot of the wasted time, where resources could be put where they should be: out ensuring that our communities remain safe.

Mr. Runciman: I think it might help, but it's a pretty big reach to say this is going to solve the problem. The reality is, it's a scheduling problem, and the fact that the courts don't work with the police authorities on a regular basis, as they should, in terms of ensuring police availability, so much of that time is wasted. I happen to have some family members who are very directly involved and I know their experience on a fairly regular basis in the court. Someone sitting around a police station versus sitting around a court may help in some respects, but unless we get greater communication between the court and the police service, it's not going to be the panacea that you're suggesting it might be.

I want to compliment you, Bruce, for being here and assisting the committee with its deliberations. I guess the chiefs' association has not requested to appear. That disappoints me, because they certainly have a long laundry list of concerns, and we're dealing with some very significant issues here in terms of the justice system of Ontario. It's regrettable that they haven't taken this opportunity. I don't know whether it's the intimidation tactics of this government, which they are so well-known for, or what the reasons are, but hopefully they will at least provide us with some kind of written contribution.

I want to talk a bit about the justice of the peace situation. You're endorsing the per diem initiative in here, which is using retired justices. We don't have any idea how many retired justices there could be or how many might be interested in doing this rather than kicking up their feet in Florida. The idea is nice, but I think the basic concept here that you're endorsing is per diem JPs. I'm a big fan of having a core of per diem JPs across the province. I guess you're still having problems getting people on weekends. The telewarrant system is helping in some respects in that regard, but a bail hearing or those kinds of issues—is it still a challenge for you to locate a JP in off hours? Would you describe it that way?

Mr. Miller: First of all, just to comment on the chiefs' organization, I'd be pleased to be their spokesperson when I'm here. I'm sure they'd be endorsing our position.

Mr. Runciman: I have no doubt about that.

Mr. Miller: The other comment too in regard to the ability to testify electronically being a panacea, we're not saying that it's going to solve all problems. We're just saying it's a step in the right direction and it makes sense.

It's the same with the JP, the justice of the peace, issue. With per diem justices, it makes sense to bring some people back. I met with a number of front-line officers last week dealing with some of the issues we have on marijuana grow-ops and they advised me that the justice of the peace shortage is still a problem. It's improved over the past five years, but it's still a problem out there and it's something we need to address. Once again, will per diem justices of the peace be a panacea? We're not suggesting that. We're just saying it's a step in the right direction and it makes sense.

Mr. Runciman: Another possible amendment to the POA and the Courts of Justice Act would be to require that in order to oblige persons who are setting trial dates, to give consideration to police witness scheduling information and availability so as to maximize the productivity of police resources required for evidentiary purposes. We can put that right in the legislation. That will be one of the amendments my party will be putting forward.

I don't know if you've looked at the act. One of the elements of this act is saying that these JPs are confined to the court. They can't go outside the court unless they're on a specific roster. I have a lot of problems with that as well. One of the reasons we've seen significant cost increases, we've seen problems in the jails with

prisoner transportation is that JPs, before they became *prima donnas*, some of them—JPs or whoever is making these decisions can't go into the jails anymore to do a bail hearing. So what we have to do is this expensive prisoner transportation, which is risky, which is costly and which is one of the sources of contraband—drugs, weapons—coming into the system, because we're transporting people back and forth.

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This independence of the judiciary I think has gone overboard and I see nothing wrong with having a room within these provincial jails where a JP can go in and conduct these kinds of bail hearings right on the site. The savings would be significant. I wonder if you have any views on that.

Mr. Miller: Certainly. One of the movements that was a step in the right direction was the use of video-conferencing for bail hearings. I believe that's an initiative that, as I recall, went forward when you were minister. That's proven to be very effective. I mean, the reality is that accused people, or a lot of the people who are going before the courts, don't want to sit around the court and wait either, so it seems to have worked for all sides.

Mr. Runciman: I've got a quick one, the qualifications for JPs. They're talking of mandatory considerations: linguistic duality, gender balance, diversity. There's no reference to things like law enforcement, criminal expertise or familiarity with victims of crime. Would you describe that as a weakness in this legislation? Suggesting sort of the politically correct mandatory considerations, but not the sort of front-line, realistic kinds of things that should be considered in the selection of JPs as well. We see all kinds of problems with respect to bail release decisions where people have been arrested on gun crimes—serious gun crimes—and they're back out in the street a few hours later. Having people who have some exposure to law enforcement, to the criminal justice field, or familiarity with the fallout for the crime victims—shouldn't those be considerations as well when we're making these kinds of decisions?

Mr. Miller: I think all of the qualifications that are in there are rightfully in there to start. I think those other qualifications, in terms of experience and knowledge and expertise, can be covered off by the committee. It's going to be important to have quality people on the appointment committee to ensure that the types of things that you're speaking about, other areas of expertise are, covered off.

Mr. Runciman: In terms of the committee that you're talking about, again, rather than the Attorney General being involved in it, my view is, why shouldn't this justice committee play that role so that we involve the elected officials who, in my view, are left out in the cold in virtually all of these choices? There should be a role for—

The Chair: Thank you, Mr. Kormos.

Mr. Kormos: Thank you, Mr. Miller. I appreciate you being here. Yesterday, Paul Hong, who's a master's

student at the Royal Military College and a graduate of Osgoode law school, came here to comment on the provisions of the bill that deal with justices of the peace. He also provided us with a copy of his recently published paper in the Criminal Reports, *A Second Look at Justice of the Peace Reform in Ontario*. It is a very, very competent commentary, Mr. Zimmer. I encourage you to read it because Mr. Hong raises the issue, of course, of lay bench versus what some jurisdictions in Canada have adopted, a JP bench that requires a law degree. He doesn't come down strongly or clearly on one side or the other. He simply raises that in terms of the standards.

But he also, I suppose most interestingly and importantly notes, as we all should, that JPs play a critical role in the administration of justice. Mr. Runciman's recent comments about bail hearings are indicative of that, illustrative of that. But he makes note that, notwithstanding this legislation—because, of course, JPs have been being appointed, notwithstanding that this bill has not yet passed. The Attorney General appointed six JPs just a few weeks ago. So the absence of the legislation doesn't impede or impair the ability of the Attorney General to appoint justices of the peace. The question put by Mr. Hong is, where is the commitment—and I'm paraphrasing very much here—in terms of the number of JPs who are going to be appointed even should this bill pass?

You spoke briefly, and Mr. Runciman more so, about some of the problems in terms of JP shortages—marijuana grow-ops. Please give us an example of what JP shortages, the inadequate number of JPs, mean out there in the real policing world.

Mr. Miller: I was pleased last week when I heard that the situation is getting better. Obviously, when officers are tied up waiting for justices of the peace or delays in a telewarrant system, time is sacrificed for an investigation. Sometimes these matters have to be timely and need to be done as soon as possible, so any delay is problematic. We also have officers standing by waiting for the warrant process to go through, and if that takes two, three, four hours, it's not just tying up the one officer, it may be tying up a team of officers.

Mr. Kormos: But what happens out there in the real world if a police officer needs a search warrant on a Sunday at 7 a.m.? It's a good example, isn't it? What does that police officer do, in any number of parts of Ontario? You've got to go to a JP or a judge to get a search warrant.

Mr. Miller: Or do it through a telewarrant process.

Mr. Kormos: So what do you do? Is there a JP assigned for that weekend for the telewarrant, are there JPs on call or do you have to simply go through the Rolodex?

Mr. Miller: It's really a combination of both. There's a telewarrant procedure. There may be JPs on call. It really depends what jurisdiction you're in. In some areas, there may be no JPs available or it's a lengthy process and things may be put off till the next day.

Mr. Kormos: That's kind of nuts, isn't it?

Mr. Miller: It is a problem, but I think it goes back to—and I spoke to it earlier—is the bill a panacea for

everything? No, it's not. But is it a step in the right direction? Are per diem JPs a step in the right direction? Are qualifications a step in the right direction? Is electronic testifying a step in the right direction? Yes, they are, and certainly we're urging that these parts of the legislation go forward.

I watched with interest when the Association of Municipalities of Ontario testified before this committee. That was their presentation as well, that these two specific schedules of the bill need to go forward as soon as possible. It's going to be a positive step forward.

Mr. Kormos: Mayor Hazel McCallion from Mississauga was here. I suspect that she's over 65, but you don't want to mess with her. And the same thing is going on down where I come from: not enough JPs. That means JP courts aren't being staffed. The doors are locked. It means that the delays are resulting in charges being stayed. Her Worship was very careful to say that this had nothing to do with revenue, with the downloading of a big chunk of the provincial offences. You see, the city still has to pay its prosecutors. The city, the municipality, still has to pay its police officers. The anticipated revenues from fines were part of the trade-off, right? That was part of the deal. So who picks up the tab when the government won't appoint adequate numbers of JPs at the end of the day? The taxpayer pays and pays and pays. That's a fair observation too, isn't it? Because the fixed costs remain steady. So I appreciate your efforts to be cautious in how you're addressing this.

You say things vary across the province. Is Toronto better serviced than remote parts of Ontario, or even parts like Niagara, Sarnia or eastern Ontario?

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Mr. Miller: I don't think you can make that broad a brushstroke. When you talk about northern Ontario or eastern Ontario, there are different problem areas.

Mr. Kormos: What are some of the problem areas?

Mr. Miller: The warrant issue is certainly improving with JPs. Provincial offences court, bail hearings—the shortages are certainly seen there. It's a problem; I'm not underestimating it. It's been a problem for many, many years, and you spoke of the issues: lengthy delays; charges being withdrawn. I mean, that's an issue, but the same time, we're saying that this is a step forward. We're just urging the members of the committee and the Legislature to move forward on these two areas.

Is it going to solve all the problems? No, not overnight. Do we need more justices of the peace? Yes, we do. Do we need more police officers? Yes, we do.

Mr. Kormos: Sure. Is there anything in this bill—help me, because if you can, I'd really appreciate it—that's going to ensure that we get more justices of the peace, that you have been able to find?

Mr. Miller: It opens up the ability to use per diem justices of the peace. Are they going to be used? I can't answer that question. The government says they're moving forward on this issue, they're going to use per diem justices of the peace, and we support that.

Mr. Kormos: Do you trust them when they say it?

Mr. Miller: We do. If they're not used, we'll be coming back before committee asking them why not.

Mr. Kormos: You trusted them when they said there were going to be a thousand new police officers, over and over again.

Mr. Miller: I think the number right now is at about 952.

Mr. Kormos: Three years later?

Mr. Miller: The commitment was for 1,000 new police officers prior to—

Mr. Kormos: The next election,

Mr. Miller: —October, and with the graduation coming up in December, I think the numbers are going to be around 950, 960. We'll be 40 short by the end of the year.

Mr. Kormos: Dollar-for-dollar police officers?

Interjection.

Mr. Kormos: Mr. Zimmer, did you bring us any lobster rolls?

Dollar-for-dollar police officers?

Mr. Miller: It was a cost-sharing program. We heard the same questions under the previous government with a thousand new officers, and certainly the government met their commitment. There were questions of whether or not—

Mr. Kormos: Maybe we'll have a clambake, Mr. Zimmer.

Mr. Miller: —a thousand new officers were put forward but certainly—

The Chair: Mr. Kormos.

Mr. Kormos: Yes?

The Chair: Could you please direct your questions to Mr. Miller?

Mr. Miller: Mr. Runciman was minister then with the thousand new officers program. The goal was reached, and we're pleased to see that the goal is being reached with this government. We'd urge you to speak to your federal colleagues to ensure that the government's commitment for 2,500 new officers federally is met, and that Ontario gets its fair share.

Mr. Kormos: Jack Layton's been doing his best.

The Chair: Thank you very much, Mr. Miller.

Mr. Miller: Thank you, Mr. Chair.

X-COPPER LEGAL SERVICES

The Chair: The next presentation is from X-Copper Legal Services. Mr. Gary Parker. I've also been asked to advise the people here that there's an overflow room.

Mr. Zimmer: Sorry, Mr. Chair, I didn't hear you.

The Chair: An overflow room. If people wish to go sit in that room, it's available. It's committee room 1, I've been told.

Mr. Parker, you may begin your presentation.

Mr. Gary Parker: Good morning, and thank you, members of the committee, for having me here today. I'm from the firm of X-Copper Legal Services.

A bit of my background: I was a police officer for seven years for the Peel Regional Police Force. Since

1988, I have been a practising paralegal, predominantly—90% of the time—in traffic tickets.

I'm going to read from a prepared presentation. It will be brief, I promise you.

Principle players from X-Copper have been involved in the traffic ticket defence field since 1988. We have seen attempts to regulate the paralegal industry come and go, together with government-sponsored commissions and reports, the results of which we lauded and supported. This is the first time we feel close to reaching the goal of ensuring that the public are served by paralegals who meet high standards of learning, competence and professional conduct.

We have some concerns:

(1) The use of the word “paralegal” is absent from the legislation. The current status of the wording can lead to confusion. The public cannot distinguish between “a person licensed to practise law in Ontario” and “a person licensed to provide legal services.” Inclusion of the terminology in the language of the legislation should help prevent confusion.

(2) Will licensing be general or specific? We support specific streams or classes of licensing as proposed in the Ianni and Cory reports; for example, immigration licence and Provincial Offences Act licence. Careers have been carved out over many years specializing in Highway Traffic Act representation. Those paralegals have developed specific skills in their area of practice and have no plans to expand into other areas. The reason the public turns to paralegals is for that very specialization. We propose that the act be amended to account for this specific specialized knowledge and to allow those who wish to, to restrict their licence to their chosen area of practice.

(3) Grandparenting: We are concerned that the much-discussed issue of grandparenting is absent from the proposed legislation. Many paralegals feel uncomfortable and unprotected with this issue missing in print. We understand the details ought to be worked out by the law society standing committee. We propose that this issue be included in the legislation. Those of us with over 18 years invested into this field would appreciate the existence of a grandparenting consideration in writing rather than a verbal assurance.

(4) Interim licensing: We suggest a system offering an interim licence wherein, upon acceptance of affidavits indicating the required work experience, the law society can, for a fee, issue interim licences, good for the transition period. The licence holder would be subject to the code of conduct and to the full complaint and review provisions of the law society. The licence holder can then apply to write the licensing exam within the transition period.

(5) Joint accounts and trust accounts: Companies such as ours have carried on business for years on deferred revenue, and there exists ongoing financial commitments. We suggest a minimum amount of consideration. We suggest \$2,000 per file before the need of a trust account, and we do not support the creation of joint accounts with clients.

(6) Education/qualifying requirements: We propose that it is incumbent upon the government to provide enough spaces in the colleges to accommodate all applicants within the transition period. For many paralegals, it would be impossible to attend a full-time college program. We suggest that night school be made available. If not, then we propose that the government make grants accessible to those who require money to cover everyday living expenses and commitments, especially those with families to provide for.

(7) Member of the law society: The current legislation does not account for paralegals to be members. I understand also that lawyers are no longer to be members. This would be akin, however, to taxation without representation. Paralegals would be required to pay dues to the society but be powerless, or at least under-represented. Some consideration is required here to level the playing field. We suggest the paralegals become associate members of the law society and that associate members be appointed as benchers of the law society in sufficient numbers as to make it meaningful.

(8) Scope of practice: Relegating the scope of practice shall be determined by the legislator and not by the law society. Let the law society administer but not design the areas of practice. This is something that rightfully lies in the lap of government.

Conclusion: I believe that a great majority of paralegals welcome regulation. Many are concerned with the current status—no accountability, no standards of competence or conduct—yet many have an understandable fear of being governed and policed by a body who may wish to regulate the paralegal field out of existence.

If Bill 14 can provide access to justice for the public and at the same time promote and protect the existence of the alternative legal services, then all will benefit.

Thank you.

The Chair: Thank you. We begin with the official opposition, about eight minutes each.

Mr. Runciman: Thank you, Mr. Parker. I appreciate your contribution. It was one of the most cogent, concise and helpful contributions that we've had: not a lot of rhetoric, getting to the point, and making it well. After listening to testimony over this past week, I guess I tend to agree with virtually all of the recommendations you are making here. You talk about a couple of things here that I would like to pursue with you briefly. The scope of practice issue: Could you elaborate a little bit on why you are concerned about the law society having the authority to regulate scope of practice?

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Mr. Gary Parker: I understand that the standing committee, although it will have some paralegals on the board, on the committee, is essentially unfettered. The government will not have control over what happens once it goes to committee. Because there has been an existence of animosity between the law society and paralegals over the history of the last 20 years, the fear is palpable that the law society will regulate us out of business. They'll welcome us at first, and through their

own bylaws will somehow manipulate the paralegal field out of business. If the government's intent is to regulate paralegals, then at least we hope that the government will take initial steps to keep us alive.

Mr. Runciman: Do you have any views on scope of practice? I know we've had some talk about family law, real estate law. Do you have any views on that?

Mr. Gary Parker: My knowledge is limited about the consequences of paralegals involved in other areas of law, so I don't think I can comment.

Mr. Runciman: Would your concerns about the scope of practice regulation lying with the law society be allayed if your recommendation 7, where you're now not permitted to be members, let alone associate members—if that request was met and you were allowed to have associate members appointed as benchers in sufficient numbers, as you say, to make it meaningful, would that that allay that other concern?

Mr. Gary Parker: It would help.

Mr. Runciman: It would help.

Mr. Gary Parker: Absolutely.

Mr. Runciman: Okay. The use of the word "paralegal": I was asking Mr. Lawrie about this. I think virtually everyone, when this legislation was tabled, found it passing strange that that term was missing. What's the rationale for this? We've heard from some law associations, "Well, people are confused, and they think that this is a lawyer they're dealing with." Of course, we've heard others say that's not the case, people like Mr. Lawrie, who's been in business for 22 years; you've been in business for a significant period of time. Do you see that there's confusion amongst the public with the terms "lawyer" and "paralegal"?

Mr. Gary Parker: No, not right now, but when this bill passes I think there could be if it remains the way it is, particularly if we are constrained in letting the public know what our business is. If we're restricted to "licensed to provide legal services in Ontario," I don't think that has any meaning to the general public. The word "paralegal" instantly comes to mind, whereas—

Mr. Runciman: I raise the spectre of the rationale behind this, perhaps the fact that this legislation is now capturing a lot of people in regulated professions who are shocked. Some are being told this is an unintended consequence, but they're sort of left twisting in the wind if this is not dealt with by this committee or through the Legislature.

Mr. Gary Parker: That's what we hope, that it will be dealt with.

Mr. Runciman: Yes, and I think it should be as well. It raises questions about the rationale for the term "paralegal" being omitted from this legislation.

Once again, thank you for a very helpful contribution.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. I think you raise concerns about flaws in this bill that are very, very critical ones. Let's follow up on what Mr. Runciman was just talking about in terms of asking, what are these people who are not lawyers but who are licensed going to

be calling themselves? Because, you see, the problem is that the bill as it reads now says they can call themselves anything they want. They're licensed to provide legal services. You want to call yourself a court agent? Call yourself a court agent. You want to call yourself a legal assistant? Call yourself a legal assistant. You want to call yourself a document processor? I don't think that's what a regulatory regime should be permitting.

I agree with you that it's the job of this Legislature to determine what it is that these non-lawyer licensed people will be called, and I've got a strong inclination towards "paralegal" myself because it has become part of the everyday language. You know what it means—most people know what it means. Darn near everybody knows it. That's number 1.

Member of the law society: Barristers and solicitors will still be members of the law society, yet the others, paying dues—and that's not fair, is it?—paying dues, being governed, being regulated, won't be members.

Barristers and solicitors, lawyers, will be able to elect benchers region to region. Down where I come from in Niagara, Hamilton—I think that's the area that is the region—we know who the people are who present themselves. There are usually competitions; there are elections. That's the advantage of having region-by-region. But two paralegal—see, I've used the word already—benchers? No. The bylaw of the law society will determine how they're to be elected and even, I suppose, who they will be elected by. Think about that, Mr. Runciman. If you've got two benchers, one for northern Ontario and one for southern Ontario, they haven't got a snowball's chance in hell of knowing who these people are, like you do when you've got region-to-region election by lawyers of lawyers to serve as benchers.

Scope of practice: Nothing in the bill about scope of practice. There are two issues that have reared their heads. One is specialized expertise. Mr. Lawrie is an example; you're an example. You guys probably know more about the Highway Traffic Act and potential defences and the Provincial Offences Act than most lawyers ever will—end of story.

People doing specialized tribunal work: We went through this. You know, the guy or the gal from the trade union representing a worker in front of WSIB probably will know more about that than most lawyers ever would even try to learn. So that's the one issue: expertise. The other issue is cost. The two overlap, but in many respects they're not the same.

There are concerns about Family Court. Look, I've got some concerns, because family law is a very complex matter with huge consequences, primarily in terms of children, where the public has a strong interest in making sure that the children's interests are well served. But there's no suggestion that paralegals—see, I've used the word again—will be able to assist people in Family Court, no debate around it, because, you see, it's not in the bill, so we can't debate it here; we can't hear expert evidence. I don't know whether there are strong reasons to say "nobody other than a lawyer." Quite frankly, I've

seen lawyers screw up matrimonial files, particularly those who have no business taking them on because they don't have enough background and expertise in matrimonial law. But we're not here—it should be the Legislature. I hope I understand you clearly, that that's what you're saying: It should be the Legislature that deals with this.

Mr. Gary Parker: Yes. Absolutely right.

Mr. Kormos: I have great sympathy for the paralegal profession because, yes, it does appear to be fragmented. The analogy to the real estate profession is not fair, because the real estate profession, before it became self-regulated, was already regulated by the government.

Mr. Gary Parker: I understand there is a sunset clause in the legislation right now, which we welcome.

Mr. Kormos: Well, a review clause.

Mr. Gary Parker: A review clause.

Mr. Kormos: Income taxes, huh? It's interesting, because the recent legislation around security guards—again, a regime that raises the bar significantly for security guards and investigators—didn't, as I recall it, create self-regulation, nor did it delegate the regulation to the law society or some other body; the government retained the regulatory role. And I hope that some day, for that security guard/private investigator profession with the higher bar and higher standards, there may be some consideration of whether or not they should be self-regulated.

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I'll tell you what all of these hearings have made me inclined to think: The government is running from this issue. The government is abdicating its responsibility, and in the course of doing that isn't being fair to consumers of paralegal services, isn't being fair to paralegals, and quite frankly, probably isn't being fair to the law society. If there is difficulty in the paralegal profession becoming self-regulatory right now, doesn't it make some sense for the government to say, "Well, fine, the government will regulate it until such a point in time that it becomes sufficiently homogeneous such that it can regulate itself"? Does that make any sense, or am I just out in left field? And I don't say "left field" disparagingly, trust me.

Mr. Gary Parker: No, it makes a lot of sense.

The Chair: The government side?

Mr. Zimmer: Just following up on this, you heard the previous witness, Mr. Lawrie. He's been in the paralegal world for 20 years, in many ways was the founder of the movement. He spoke of paralegal organizations having come and gone over the years. Most recently, there was an organization, PPAO, the Professional Paralegal Association of Ontario. I understand it's disbanded and the dominant organization now is PSO, the Paralegal Society of Ontario. Even my colleague opposite, Mr. Kormos, acknowledged that the paralegal profession is fragmented. They have difficulties organizing themselves, policing themselves and so on. That all led Mr. Lawrie to the conclusion, and I'm quoting him, "The only present agency available to regulate the paralegals is the law society."

I assume you support that concept, subject to the refinements, the adjustments and the other things that you'd like to see massaged in the legislation.

Mr. Gary Parker: "Massaged" is a good word. Yes, I concur with Mr. Lawrie's position and what you just said, but with provisos and cautions.

Mr. Zimmer: Thank you very much for your very careful and thoughtful presentation.

The Chair: Thank you, Mr. Parker.

STEPHEN PARKER
MARGARET LOUTER

The Chair: The next presenters are Margaret Louter and Stephen Parker. This will be a 20-minute presentation. Good morning.

Mr. Stephen Parker: Good morning, everyone. My name is Stephen Parker. With me, to my right, is Margaret Louter. We are founding directors of a paralegal association that was known as the Professional Paralegal Association of Ontario. We have served as directors since the PPAO's inception in the year 2000. PPAO has consistently been the key participant in discussions surrounding the regulation of paralegals. Margaret and I have a strong history with the stakeholders, the government of Ontario and the Law Society of Upper Canada, and are pleased to have this opportunity to speak at these committee hearings.

I took over as president of the PPAO from Paul Dray and was also president of the Institute of Agents at Court for six years until stepping down earlier this year. I reside in Brampton and have practised as a paralegal for over 20 years, after serving five years as a police officer in England and 10 years with the region of Peel. Margaret resides in Niagara-on-the-Lake and has practised as a law clerk for 27 years.

Ms. Margaret Louter: Good morning. The PPAO was established as an umbrella organization for a number of paralegal service providers in Ontario in September 2000 in the belief that the recommendations made by the Cory report would serve at that time as the basis for the legislation relating to the regulation of paralegals. The legislation was apparently drafted but never reached the floor of the Legislative Assembly. As founding directors, we participated in the incorporation of the PPAO and the establishment of its bylaws and membership criteria.

Between February and April 2002, Stephen and I participated in meetings with the working group of lawyer associations formed by the law society designed to find some consensus respecting the regulation of paralegal activities in Ontario. Participation in those meetings was helpful in opening lines of communication between the various lawyer organizations and the paralegal community. To this day, these lines of communication remain open. We achieved consensus on many principles underlying a proposed framework for the regulation of paralegals. A consultation document was prepared by the government relations committee of the law society and was released to the public for consideration. A number of

town hall meetings were organized by the PPAO in which we participated, with a view to correlating the paralegal community's concerns and questions about the consultation document. It was hoped that this consultation document would lead to action, but this did not occur.

Many aspects of the 2002 consultation document formed the basis for the law society's 2004 consultation document entitled *Regulating Paralegals: A Proposed Approach*. The 2004 consultation document became part of the Law Society Task Force on Paralegal Regulation report, known as the task force report. This report was approved by the law society and delivered to the Attorney General in response to his request that the law society be the regulator of paralegals.

At the same time, the PPAO commissioned Professor Frederick Zemans, a noted scholar and professor at Osgoode Hall Law School, to prepare a report for the purposes of investigating the services that would be appropriate for independent paralegals to provide to the Ontario public as a regulated profession. He also evaluated the merits of the proposals of the law society. The PPAO recruited sound and experienced members of the paralegal community at large to make written contributions to Professor Zemans' research detailing practice-specific contributions made to the provision of legal services by paralegals in various areas of practice. These contributors, including myself and Stephen, spent countless hours with Professor Zemans fine-tuning the contents of the report and preparing for its presentation to government and other interested stakeholders.

His report indicated that "A successful regulatory scheme must balance the interests of protection of the public against incompetent and fraudulent legal practice and access of the public to convenient, affordable legal services." He concluded, after careful review of the regulatory options, various studies of paralegal regulation and contemporary developments, that the goals of access to justice and the protection of the public are best served by the creation of a legal services corporation for the regulation of Ontario paralegals.

His findings were never implemented by the PPAO. However, the PPAO continued its process towards self-regulation. We developed a code of conduct and established a mandatory errors and omissions insurance program. Many members refused to participate in the mandatory insurance program and therefore did not comply with the membership requirements. Membership dwindled to the point that it was no longer viable to continue the operations of the PPAO. Stephen and I have always believed that the PPAO would be one of the founders of the first paralegal licensing regime in North America. However, due to the lack of support by the paralegal community, it was with great regret that the PPAO has had to take steps to wind up its affairs.

Notwithstanding the present situation of the PPAO, Stephen and I remain committed to the original mission statement and vision of the PPAO "to advance and promote the interests of professional paralegals in the province of Ontario."

The present situation is unfortunate. In my role as vice-president of the PPAO, I have received countless telephone calls from citizens of Ontario who have been wronged by a paralegal in some manner. Many complainants were referred to me by the law society or by the consumer protection branch of the Ministry of Government Services. Without legislative authority, in most cases the PPAO was unable to remedy their situation.

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Stephen and I support the leadership of this government in introducing Bill 14 as an important stepping stone toward protecting consumers in Ontario who use the services of paralegals and ensuring access to legal services to all.

Mr. Stephen Parker: We have a number of comments and recommendations regarding Bill 14 and respectfully submit them to you for consideration. Some of these you've heard before from more than one speaker.

Grandparenting: The foremost concern of paralegals since the introduction of the bill is the lack of any reference in the bill to any grandparenting provisions. Many believe that because the bill contains no such reference, there will be no provisions for grandparenting in the regulatory scheme.

In my capacity as head of the Institute of Agents at Court, I was approached by many. Paranoia has become rampant, particularly within the court agent community, to the point that many experienced court agents believe they will be forced to close their businesses in order to obtain a college diploma to qualify to become licensed legal service providers, which will leave many of the public unrepresented.

It has been suggested that the responsibility for such provisions is within the purview of the law society, as the proposed regulator, and will be dealt with by way of the law society bylaws. It is also acknowledged that the task force report includes recommendations on grandparenting, yet court agents clamour for some more concrete evidence that grandparenting will occur, and it would appear the only acceptable proof of its existence is a specific reference in the bill.

Commissioners of oaths: The 2004 consultation document provides as follows: "Accredited paralegals would become commissioners of oaths within their designated areas." Being commissioners of oaths is of paramount importance to paralegals. It will make their practices more efficient if they are commissioners, able to take their clients' affidavits instead of having to take their client to a lawyer or a justice of the peace solely for this purpose.

Confidentiality: Paralegals are being subpoenaed by prosecutors with the intention of having that paralegal testify as to conversations between the paralegal and the client in relation to the charge before the court. Paralegals have no protection from prosecutors and others regarding confidential information provided to them by their clients.

The task force report recommends that the model for the professional regulation of paralegals should follow

that currently in place for lawyers, which includes paralegals being subject to the same confidentiality rules as lawyers. This would require paralegals to hold in strict confidence all information concerning the business and affairs of clients acquired in the course of the professional relationship, subject to some very limited exceptions.

Title protection and nomenclature—"paralegal": This you've heard before. The term "paralegal" was eliminated from the bill and replaced by the definition "a person who is licensed to provide legal services in Ontario." This definition is cumbersome and fails to title these professionals, but only serves to describe what they do rather than who they are.

Paragraph 168 of the task force report states, "The task force considered other names for paralegals, such as 'agent' and 'court and tribunal agent,' but rejected them for a number of reasons. Firstly, the public has come to recognize the name 'paralegal,' and to change it may lead to further confusion in the legal services marketplace. Secondly, paralegals have chosen to call themselves by the name 'paralegal,' and the right to self-name should not be interfered with, absent a compelling reason to do so in the public interest." That's quoted from paragraph 168.

We concur with this section of the task force report. The report continues however, and at paragraph 169 seems to contradict itself by then recommending the terminology "persons licensed to provide legal services."

The term "paralegal" has become entrenched in the language that is commonly familiar and to eliminate it now would indeed confuse the very public this bill is designed to protect.

Ms. Louter: In conclusion or summary, I'll just read through the five recommendations:

(1) That the bill provide that grandparenting is intended to be dealt with by the legal services provision committee in the bylaws;

(2) That those persons licensed to provide legal services in Ontario be commissioners of oaths within their designated areas of practice;

(3) That the bill provide that persons licensed to provide legal services be required to hold all information concerning the business and affairs of clients acquired in the course of the professional relationship in strict confidence, except when required by law or by order of a tribunal of competent jurisdiction;

(4) That the term "paralegal" be included in the definition of a licensee, e.g., "A licensee means a person that is licensed to provide legal services in Ontario and may also be known as a paralegal. A licensee may be referred to as a paralegal for the purposes of advertising their services to the public"; and

(5) That the name of the standing committee be changed to "paralegal standing committee," thereby recognizing the term "paralegal."

Thank you.

The Chair: Thank you. You have about six minutes each, beginning with Mr. Kormos.

Mr. Kormos: Thank you kindly. I've read your submission. Okay. We've got all these acronyms and I presume at some point that legislative research, when it provides a summary of the submissions, is going to help us out on this a little bit, because we heard earlier today from the Paralegal Society of Ontario that PPAO was an umbrella group.

Ms. Louter: That's right.

Mr. Kormos: So belonging to this was the PSO, the Paralegal Society of Ontario. Who else?

Ms. Louter: The Institute of Agents at Court.

Mr. Kormos: We've had people here from them the last day Mr. Zimmer was with the committee.

Ms. Louter: There were members of the POINTTS organization, the Ontario Association of Professional Searchers of Records, the Institute of Law Clerks of Ontario, the Paralegal Society of Canada. There were a few members from that organization as well.

Mr. Kormos: The Institute of Law Clerks. Back up a little bit; help us.

Ms. Louter: You want the names?

Mr. Kormos: Yes.

Ms. Louter: Ontario Association of Professional Searchers of Record, which is OAPSOR; Paralegal Society of Ontario; Institute of Agents of Court; POINTTS, not officially but we had POINTTS members; as well as the Institute of Law Clerks, not officially, but we had law clerks as members.

Mr. Kormos: So the Institute of Law Clerks was not—

Ms. Louter: We had members from that association.

Mr. Kormos: So who were the organizations, then, for which PPAO was the umbrella organization?

Mr. Stephen Parker: All of them.

Ms. Louter: The membership of the organization were individuals of those groups, and there were representatives of each of those groups on the board of the PPAO, elected by the entire membership.

Mr. Kormos: The PPAO, because of a schism over regulation, disbanded?

Ms. Louter: No. I think you were out of the room when we said that. That is perceived by some to be the case, but we were on the road to self-regulation. We introduced a mandatory insurance program; we introduced a code of conduct which required members to have trust accounts and sign a membership application that said they would adhere to that code. There were some who said to me personally, "I will not sign that, I will not have a trust account and I do not need insurance."

Mr. Kormos: Due to a lack of support by the paralegal community, it was with great regret that the PPAO has had to take steps to wind up its affairs.

Ms. Louter: Yes. Our membership was over 500 at a certain point, and when we introduced those regulatory rules, I think our membership was down to probably about 75 members.

Mr. Kormos: Look, nobody here is anything but sympathetic. It's been a difficult, difficult, difficult road that people have travelled. Clearly, bona fide, legitimate

and professional paralegals support a regulatory regime; that's clear as well.

Ms. Louter: I would agree with that.

Mr. Kormos: We've heard from a whole lot of paralegals for whom the regulatory regime, in their view, should not be the law society. We've heard from others who it appears could live with the law society if there were some adjustments made to the legislation.

In my view, one of the problems is the emphasis on self-regulation. That's a relatively new phenomenon in the province by and large, other than the lawyers, because they got on that band wagon, as they'll point out, 200 years ago and avoided governmental regulation. How then do we address the concerns that folks have about real or perceived conflict of interest with lawyers, when clearly the vast majority of convocation's members, the benchers, are lawyers, and when there's been a long-time tension between the lawyering community and the paralegal community, although I have to concede that that's changing. It's shifting all the time. You know the issues that have been raised. I'm not going to waste our time by listing them here. How do we address those within the context of this bill? Or do we simply say, "Just do it"?

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Mr. Stephen Parker: As far as some of those issues are concerned, there are paralegals who, I suppose, in a nutshell, don't trust the law society. That's what it comes down to. I have expressed those feelings when the PPAO was in existence at meetings with the law society, and I have been assured by the law society that we can trust them. And, yes, while on paper theoretically a stroke of the pen could wipe us all out, the answer was that the government wouldn't stand for it.

Mr. Kormos: Many years ago, I bought a membership at Vic Tanny's, the exercise club, and they said, "Don't worry. You can trust us." I think I was in the last week of people who bought six-year memberships.

The Chair: Thank you, Mr. Kormos. The government side—

Mr. Kormos: Do you remember Vic Tanny's? My cheque was cashed.

Ms. Louter: Can I comment on that question? I believe that the model for governance proposed by the bill gives paralegals a prominent role in the regulatory regime. That's it.

The Chair: Thank you, Mr. Zimmer?

Mr. Zimmer: Obviously, the PPAO has spent a lot of time over the years on this. I mean, you've met many times with me at the Attorney General's office, the law society. You engaged a law professor at Osgoode to help you work up submissions and analysis of the governing model, and you took your own steps in the association, setting up a code of ethics and a mandatory insurance program. Then, of course, the thing fell apart, as I understand it, over the issue of mandatory insurance.

When you went to those members of the PSO and discussed this issue of the mandatory insurance and they were reluctant to do that, what was the response that you

got back from them as to why they would be reluctant to participate, for instance, in a mandatory insurance program? I mean, there are protections there for the paralegal. There are protections there for society. So something as fundamental to a professional body, whether it's doctors, architects, paralegals, engineers, as an errors and omissions plan—what was your sense of the reluctance to go along with that?

Ms. Louter: The associations all gave undertakings to the PPAO to commit to the insurance program, and they were not honoured. We tried, we communicated with them, but it did not happen.

Mr. Zimmer: But my question is, do you have any sense of why they wouldn't participate? Either to you or to Mr. Parker.

Mr. Stephen Parker: A lot of people simply felt they didn't need it. Nobody's ever sued them. So why do I need insurance? Surprisingly enough, Mr. Mitchell, who was here yesterday with Eileen Barnes, organized an errors and omissions program for the PSO. How many of their members are actually participating in that? I really cannot answer that. Surprisingly, though, the insurance plan that he organized was somewhat more expensive than the one that we organized. So again, I don't know. As far as I understand it, the PSO membership is required to have errors and omissions insurance. I can only assume that that is the case. They objected to our plan on the basis that they didn't feel they needed it, and yet the PSO organized one for themselves.

Mr. Zimmer: Are all PSO members—is it mandatory to participate in the plan, or is it optional?

Mr. Stephen Parker: It's mandatory. It was mandatory with us too, but it didn't necessarily—

Mr. Zimmer: Do you know if it's enforced?

Mr. Stephen Parker: I have no idea.

Mr. Zimmer: Thank you.

The Chair: Mr. McMeekin?

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Just quickly, Mr. Chairman, I remember Bobby Kennedy once said that good judgment is based on experience and experience, invariably, on bad judgment. When I asked my mom what that meant, she said, "Make mistakes, but never make the same mistake twice."

So I want to ask, given that necessity is, we've been told, the mother of invention, a hypothetical question: If the government were to back off this bill and say to the paralegal community, "You've got six months to get your act together," do you think they could pull that off?

Mr. Stephen Parker: I'm sorry, are you saying—

Mr. McMeekin: Portions of the bill would go forward, but the section dealing with paralegals being regulated by the law society would be held in abeyance, with an invitation, some tools, maybe even the law society invited to help out, I don't know. You've got six months, sort of a shotgun clause—not my phrase, somebody else's phrase—or a shotgun approach. You've got six months to get it together. If you can do it, great. If not—I'm asking you to speculate, but nobody's in a better

position to do that than you because you've been part of the effort to build consensus.

Ms. Louter: I would have to say that I do not believe there's enough maturity in the profession for that to happen. One of the things that's very important is education, and I don't believe we can even agree on what the standard of education would be.

Mr. McMeekin: Okay. I appreciate that.

The Chair: Mr. Runciman.

Mr. Runciman: I don't think anyone has realistically suggested that as an option. I think the option that's been presented by a number of witnesses is government, through the Ministry of Government Services, regulating the profession until such time as they're capable of taking over the responsibilities of self-governance and self-regulation. I'm not sure why that was raised.

In any event, a lot of what you've said here today we've certainly heard from others, but giving us some insights into what happened with the PPAO is helpful.

I am curious with respect to your recommendations that you haven't touched on, a couple of things that have been referenced: The scope of practice issue being essentially left in the hands of the Law Society of Upper Canada, which may not concern you in terms of your individual responsibilities; and the other element, which I guess ties in with this, which is membership in the law society. That was raised by the previous speaker, and you were present for that. Do you not have any concerns about those two issues at all?

Mr. Stephen Parker: Yes, I do. We wanted to restrict it to these issues for the brief period of time we have, but I'm prepared to answer that. In discussions with Mr. Zimmer's office and the law society, we did make it known, when we were part of the PPAO, that to be regulated and to pay dues to an organization to which we're not allowed to belong flies in the face of reason. It was brought to our attention that only lawyers can be members of the law society. I suggested that we have a classification of "paralegal member" or "associate member" or words to that effect, to make it very clear and separate. But that is an issue that we would like to see clarified, yes.

Mr. Runciman: And you'd feel more comfortable if that was the case in terms of scope of practice being defined, if you will, by the law society?

Mr. Stephen Parker: Yes.

The Chair: Thank you very much for your presentation.

ALLISON GOWLING

The Chair: The next presenter is Allison Gowling.
Interjection.

Mr. Allison Gowling: Mr. Kormos, I've never played left field, centre field or right field. I don't have the depth perception. If I could catch the ball, I couldn't even hit the cut-off man.

Mr. Zimmer: How's your throwing arm?

Mr. Kormos: It's tremendous.

Mr. Gowling: That's why I umpire.

Just to one member's question about the hypothesis of the six months, my answer to that is, give us the legislative authority and six months and watch what we can do.

The Chair: You have 20 minutes.

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Mr. Gowling: Good morning, members of committee. My name is Allison Gowling. I don't think you have to ask where the name Gowling comes from: just down Bay Street a little bit.

Anyway, I've been a paralegal for about 10 years. I got into the profession after suffering a disabling spinal injury at work, and through the auspices of the Workers' Compensation Board. At the time, I was one of the first graduates of the first court and tribunal agent class at Sheridan College. I have a general and eclectic practice in Cayuga. If you don't know where Cayuga is, think Caledonia, 10 miles south-southeast.

I have a prepared text that I previously sent in to the committees branch, and I added copies of my resumé today for you. I also added some newspaper articles and law society gazette articles that were given to me just days ago.

The background: The proposed regulation of the paralegal profession in Ontario has long been a topic of intense debate since the 1990 Ianni report and through the Cory hearings and subsequent report of 2000.

The expected aims of the proposed legislation: It is presumed that the expected aims of the proposed regulation of paralegals are the protection of the general public, to increase the efficiency of the courts, to regulate, to set parameters for education and certification and to provide the necessary supervision and control of the paralegal profession by the Law Society of Upper Canada.

The likely result: It is strongly suggested that the likely result of this proposed legislation will be an instant narrowing of the areas of practice that paralegals now operate in; that the Law Society of Upper Canada will continue over the next five to 10 years to narrow the areas of practice for paralegals until paralegals no longer appear in any court or tribunal; and that members of the general public who have to avail themselves of the justice system in Ontario, whether it be for criminal, quasi-criminal, civil, family, administrative or whatever area of law, will do so through a barrister or solicitor or represent themselves. As a result, access to justice for members of the general public, especially those citizens who cannot afford a barrister or solicitor, will be severely curtailed, leading to miscarriages of justice and bringing the administration of justice into disrepute.

In recent months, both the chief justice for Ontario, His Lordship the Honourable Mr. Justice Roy McMurtry, and the chief justice of the Supreme Court, Her Ladyship the Honourable Beverley McLachlin, have stated in addresses that the legal system is rapidly being priced out of reach for the average citizen and as a result they are being denied what is or may be due them in a court of law. There are some articles that should be attached with my package.

As well, one of the alleged aims of this legislation is protection of the general public. What it will do is provide the Law Society of Upper Canada an opportunity to rid the province of all paralegals whom the law society deems corrupt, which to the law society, in my opinion, in all likelihood, will be all paralegals.

For years, the law society has opined, whined, bled and basically cried wolf about all the paralegals being corrupt, undisciplined, preying upon unsuspecting members of the public, passing themselves off as lawyers etc. While it can be said that there are unscrupulous, criminal, unethical, unprincipled and incompetent paralegals at work anywhere in the province, it can also be said with great certainty that unscrupulous, criminal, unethical, unprincipled and incompetent doctors, nurses, accountants, veterinarians, social workers, real estate agents, financial advisers, clergymen etc. are at work anywhere in the province as well. And there are unscrupulous, criminal, unethical, unprincipled and incompetent lawyers. We read about them all the time. See the article about Mr. Shoniker.

However, the law society finds it convenient and seems content to attempt to ignore or gloss over any particular problems, activities or difficulties with lawyers, ones who pillage clients' trust money or launder money of a suspicious origin or even destroy evidence that has been subpoenaed. The Law Society of Upper Canada cannot continue to have it both ways despite their best efforts and insistence.

Areas of practice that I feel a paralegal can be of most use in: civil, specifically small claims and first-level appeals to Divisional Court. This area of civil court, namely the Small Claims Court, has usually been the bailiwick of paralegals as, until the past five years, the monetary limit of the Small Claims Court has never been high enough to be cost-efficient for barristers and solicitor to appear on a constant basis. Even with the recent rise of the monetary level of the Small Claims Court to \$10,000, barristers and solicitors seldom appear, either through a lack of familiarity with the rules of the Small Claims Court, a preference for not appearing in this venue or for a myriad of reasons. Paralegals provide a much more cost-efficient method of serving the needs of the general public in respect to the Small Claims Court, either through an hourly rate, a flat rate or a straight commission on what is collected.

An appeal of a Small Claims Court judgment to a single judge of the Divisional Court is another area that paralegals can undertake for clients in the same efficient manner as the original claim.

Currently, since paralegals are generally not allowed in the Divisional Court, and since a layperson would have an incredibly difficult time in knowing how to properly prepare an appeal to the Divisional Court, and since the cost of retaining the services of a barrister and solicitor in relation to the amount of the judgment in question in all likelihood would be extremely prohibitive, allowing paralegals to represent clients at the first level of appeal to the Divisional Court would most certainly

improve access to justice for members of the general public. However, any paralegal wishing to appear in this venue must be able to know how to order, and where from, transcripts of the original hearing; how to prepare and assemble a factum, appeal book, compendium; what rules apply, etc. This was recommended in the Cory report, but totally ignored in the proposed legislation.

Criminal: The area of criminal law has long been an area for barristers and solicitors only; however, it can also be an area for paralegals, so long as those paralegals can demonstrate the requisite knowledge, skill and abilities necessary to adequately represent clients in criminal court, as per the Romanowicz decision of 1997.

It is an established fact that the legal aid system in Ontario is woefully inadequate and much too narrow to be of use to anyone in Ontario except for those members of the general public who are in extreme poverty. Paralegals would not only, again, provide a cost-effective alternative for members of the general public who require representation in criminal court, but could be of assistance to legal aid, especially in those outlying and rural areas where legal aid has difficulty in obtaining the services of members of the local bar. However, it is worth repeating that education and certification are the keys to ensure that members of the general public are properly represented.

Quasi-criminal or provincial offences court and subsequent appeals to the criminal court: As with Small Claims Court, provincial offences court has usually been the bailiwick of paralegals. It not cost-efficient for barristers and solicitors, as well as members of the general public, to appear on a constant basis. As with criminal law, education and certification are still the keys to proper and efficient representation for members of the general public. As well, appeals of provincial offences convictions to the Ontario court, criminal division, can also be undertaken by paralegals, provided the paralegals possess the proper education, knowledge and experience to satisfy the court. However, as with an appeal of a small claims judgment, any paralegal wishing to appear in this venue must be able to know, again, how to order transcripts, prepare factums, etc.

Legal aid: I mentioned this before, but I'll say it again. It can be safely argued that the legal aid system in Ontario has degenerated into a state akin to a festering sore. As the wealthy do not need legal aid, and the middle class do not qualify for legal aid because of ridiculously low minimums and property rules, only those in poverty can properly utilize legal aid. The end result is that more and more members of the general public do not qualify for legal aid and cannot afford a barrister and solicitor, therefore representing themselves, all of which slows the judicial process down to a crawl, as the presiding judge must, while attempting to remain neutral, ensure that the accused is afforded every opportunity to properly defend himself or herself. This crawl continues to overburden a justice system that is already sinking under the weight of the demands of our growing society. This is a denial of natural justice and a denial of

access to justice, as Mr. Kormos pointed out earlier about Family Court. I'm going to dwell on support, custody and access.

If there's any one section of the judicial system in Ontario that is ready to collapse at any moment, it is the family divisions of the Ontario court and the Superior Court. It is estimated that as much as 75% of the litigants in both family divisions are unrepresented; most are single parents, usually female. As in the criminal court, this lack of representation places judges in the difficult and untenable position of ensuring that the rights of the unrepresented litigants are properly protected while maintaining their neutrality. And, as in criminal court, where their liberty may be at stake, even more may be at stake. In Family Court, a litigant's ability to have custody of or to visit or be involved with the lives and activities of their children is seriously jeopardized by self-representation. Nowhere is equal access to justice more necessary than in the family courts, and nowhere is access to justice more almost invisible than in the family courts.

Under the proposed legislation, paralegals will not be allowed to represent clients in the Ontario court, family division. Will this denial force these litigants to use a barrister and solicitor to represent their interests? No, these litigants will be unrepresented.

I personally have been afforded the right and standing by presiding judges on many occasions to represent clients in the Ontario court, family division, in Cayuga, Brantford and Simcoe, as I have taken the time and care to properly acquaint myself with all of the rules and procedures of the Family Court.

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As stated previously, the key to proper representation is education and knowledge. Paralegals can be an invaluable resource for members of the general public who find themselves in a Family Court quandary, and be cost-efficient as well.

Administrative: The area of administrative law is another area that paralegals excel in. Paralegals provide, as they do in Small Claims Court and provincial offences court, a cost-efficient method of serving the legal needs of the general public in the areas of WSIB—meaning compensation—Canada pension, employment insurance, Ontario Works, Ontario Rental Housing Tribunal, and so on. However, it can be argued that there may be a need to curtail the practice of the contingency fees in respect to administrative law judgments such as WSIB and Ontario Works.

Currently, as with Small Claims Court appeals, paralegals are generally not allowed in the Divisional Court. A layperson would have an incredibly difficult time in knowing how to properly prepare an application for judicial review to the Divisional Court, and the cost of retaining the services of a barrister and solicitor, in likely relation to the amount of the judgment in question, would also be prohibitive. Allowing paralegals to represent clients before the Divisional Court in applications for judicial review such as compensation, the rental housing

tribunal, Ontario Human Rights Commission, etc.—and, in Canada pension matters, before the Federal Court of Appeal—broadens significantly the general public's access to justice. And isn't access to justice and the public interest what Bill 14 and paralegal regulation is all about?

Labour: In respect to labour law, paralegals can be a very cost-efficient method for businesses with collective agreements to be assisted in various matters related to those agreements, such as grievances and arbitrations and applications for judicial review.

Estates and real estate: With the proper training and monitoring in place, there is no reason paralegals cannot assist members of the general public with basic wills and estate work and straightforward real estate transactions.

I'll touch on this again. The likely result of the legislation: If passed, it will eventually place all paralegals where the law society wants them, out of the courtroom and into a dark corner pushing papers; in short, to be a law clerk. Members of the general public who need legal assistance for whatever reason or matter will have to retain the services of a lawyer. If they cannot afford a lawyer, then members of the public will make one of four choices:

- abandon their action and walk away empty-handed, no matter how strong their case might be;

- surrender to the other side, accept whatever table scraps are thrown their way, and lose everything;

- surrender to the crown and accept whatever penalty is imposed, whether it be right or not, whether they be guilty or not; or

- defend themselves, and the resulting bottleneck of cases and the incredibly slow speed at which these self-represented matters will proceed will slowly strangle our judicial system and cause it to collapse in on itself.

In closing, I'd like to suggest to the learned committee that they make a recommendation to scrap this proposed legislation insofar as it deals with paralegal regulation, as it does not even remotely come close to serving the interests of the public or improving access to justice; or amend the proposed legislation to bring it more in line with Justice Cory's report. The proposed legislation is extremely harmful to residents of Ontario and will cause harm and damage.

Paralegals are not out to circumvent, to take cases away from barristers and solicitors or to try to replace them. Paralegals can complement, augment, assist and generally be a great reinforcement not only for lawyers but for the legal profession, the court system and the judiciary as well. Paralegals can very easily and competently complement barristers and solicitors, in the manner that CAs, CMAs and CGAs work together, and as chiropractors and midwives assist the medical profession.

Without sounding pompous or egotistical, I am walking proof of what a sound education, good research, uncompromising integrity and principles, and an incredible work ethic can accomplish. In these past 10 years that I've practised, I have continually reached out to touch, to climb, to attain and to speak at the next level,

not for my benefit but for my clients' benefit. As a result, as mentioned earlier, I've been granted standing in the Ontario court, family division, in Cayuga, Simcoe and Brantford; for small claims appeals in the Divisional Court of Ontario; and at the Federal Court of Appeal for an application for judicial review on a CPP pension decision. I did not receive standing because of my spartan good looks. I have acquitted myself admirably, and I have received compliments from various judges on my deportment, my pleadings etc. So it can be done, but the key is education, certification, professional development and regulation.

As well, social workers regulate themselves, as do real estate agents, accountants, doctors, nurses, chiropractors, massage therapists, financial advisers, etc. Why not paralegals? We should be allowed the opportunity to govern and regulate ourselves and be allowed the opportunity to succeed and, conversely, the opportunity to fail.

However, the Attorney General does not wish that opportunity to be given to paralegals. Why? Because the Law Society of Upper Canada wants to eliminate paralegals as a source of competition to ensure the law society's fiefdom, and access for the general public be damned. The Attorney General is fearful to row upstream against a very powerful and shrill opponent.

The proposed legislation is supposed to ensure access to justice. The proposed legislation does not ensure access to justice but instead will ensure the death of the paralegal profession, as well as the ongoing despotism and tyranny of the Law Society of Upper Canada. The members of the general public, residents of Ontario and all users of the judicial system in Ontario will be hurt, will be damaged and will be incredibly poorly served by this proposed legislation.

I would strongly suggest to the learned committee that there is an alternative. There is Justice Cory's report, which is currently sitting in the Attorney General's office. Perhaps it is time to pull Justice Cory's report off that shelf, dust it off and draft just, fair and useful legislation that benefits the general public and their needs—not the proposed legislation, which insofar as the Law Society of Upper Canada is concerned is a self-serving document meant to preserve the world for the law society and chase the barbarians from the gates of Rome.

You can tell my mother was a schoolteacher.

The Attorney General should propose legislation that benefits the needs and interests of members of the general public and residents of Ontario, and not propose legislation that kowtows and panders to a select group.

If my words, thoughts and inferences have annoyed and perturbed the committee, I do apologize. However, I come from a geographical area and an era where you stand up and tilt at windmills for what you believe in and what you believe is right, and proceed full speed ahead and damn the torpedoes. Thank you for your time and your consideration.

The Chair: Thank you. Just a quick question from each side. Mr. Kormos.

Mr. Kormos: Thank you, Mr. Gowling. The problem is, and you heard from the PPAO—because their work was contemporaneous with Cory, right?

Mr. Gowling: Not so much. That was more fragmented. I should have—

Mr. Kormos: No, I'm talking about the time frames.

Mr. Gowling: Somewhat.

Mr. Kormos: Yes. See, the problem is, I appreciate the difficulty in bringing the paralegal community together for self-regulation, but I also despair at the fact that the Legislature is not going to be discussing and voting on or determining things like scope of practice, standards, structure, governance of the regulatory body, etc. That's what causes me grave concern. It was you who gave us some copies of these monthly—is it monthly?

Mr. Gowling: I think it's quarterly.

Mr. Kormos: The law society has the wall of shame for bad lawyers. To be fair, are you pointing out that the law society is too harsh? Because other people will say that the law society goes overboard in terms of protecting lawyers. It would seem to me that they've handled a few here, more than a few. What are you saying with this particular document?

Mr. Gowling: I should have said this at the start, and I do apologize. I sat on the PSO board for six years—one term as secretary, one as vice-president and two as president. I also sat on the inaugural board of the PPAO for two years, so I was in the middle of this war, for lack of a better phrase.

The thing is, you're going to find bad people, criminal people, in any profession, but we have rarely ever seen the law society, from what my dealings have been—

Mr. Kormos: A disproportionate number in the Canadian Senate, but that's a different discussion.

Mr. Gowling: The fact is, we just don't hear too much. The law society seems to gloss it over. They worry too much about us. The PSO set up our own disciplinary process—

The Chair: Very quickly, Mr. Gowling, if you could just finish off.

Mr. Gowling: Okay. We set up our own code of ethics, our own insurance program and disciplinary process long before the PPAO was even around, and we still have it in place. Our insurance is mandatory. That's one of the reasons I joined the PSO. Actually, the only reason was to get the insurance.

The Chair: Thank you. Government side?

Mr. McMeekin: Mr. Gowling, words, thoughts and opinions and tilting at windmills have never bothered me, so let me just put that up front. While I'm an idealist, I'm not naive.

We've heard a lot of testimony back and forth about what's happening. Mr. Runciman suggested that no one has seriously suggested that self-regulation is an option. I've heard a lot of people seriously suggest self-regulation as an option. You preambled your presentation by saying, "Give us six months and the tools." I want to ask you, what tools do you need?

Mr. Gowling: I would say we would need legislation that we could enforce. At the PSO, we have a minimum of either two years' practice or a minimum two-year community college diploma, such as Sheridan, Seneca, Humber or something like that. If we are given the legislative authority to enforce the minimum standards to set education standards, regulatory standards, areas of practice—

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Mr. McMeekin: You wrote a paper on that, or the PPAO wrote a paper on some of the prerequisites of self-regulation.

Mr. Gowling: Yes. I made a submission to that; I don't think it made it into the report. However, the fact is, if you just say go out and organize yourselves, we've been doing that since 1996. Everybody wants to get from point A to point B, but nobody can agree on which taxi, bus, plane, train or automobile to take. A lot of the time it's egos. It's silly little things that prevent it. It frustrated me all to Hades in my years on the PSO board because that was one of the things I strived for.

Mr. McMeekin: So you're talking self-regulation. What's the answer? How do we get there?

Mr. Gowling: Self-regulation is the best way to go. As I said, give us the opportunity to succeed and to fail. If the law society is the regulatory body, I will work with it because I have no choice. It's either that or I go pump gas or stock shelves.

The Chair: Thank you, Mr. Gowling. Thank you for appearing before the committee today.

Mr. Gowling: Thank you for listening to me, Mr. Chairman. I certainly appreciate it.

The Chair: I'm compelled to say that if I were a judge and you cracked your knuckles like that, I'd give you standing too—and with the last name Gowling.

Mr. Gowling: I usually wait for cross-examination to start.

Now I'll go see if I can find my ancestor's portrait in here. Is it worth mentioning? I'm descended from Sir Oliver Mowat and the Black Donnellys.

Interjection.

Mr. Gowling: Mother always said there's no room in the Mowats for white sheep.

ROSALIE MURACA

The Chair: We have Rosalie Muraca, who's up next. Welcome to the committee, Ms. Muraca. You may start, and you have 20 minutes.

Ms. Rosalie Muraca: Thank you, Chair and committee. My name is Rosalie Muraca, and I'm here to speak to you with regard to my concerns with Bill 14.

I recently graduated, in 2005. I have some experience as a legal assistant and working as a paralegal under the supervision of a lawyer, but my concern with this bill is that the proposed amendments fail to provide substantive information on the powers to be given to paralegals or the manner in which regulating paralegals will be implemented, financed and enforced.

There's no framework concerning eligibility, standards of conduct, complaints procedure and disciplinary guidelines.

We all have a responsibility to look for ways by which more Canadians can gain meaningful access to their justice system. Meaningful access depends in part on having access to legal services in a cost-effective and responsive manner.

Affordability cannot become a barrier to justice. People's financial means should not deny them access to the law. Consideration should be given to the fact that a small percentage of people can afford lawyers.

I think when an individual comes in contact with the justice system they should have a choice whether they want a lawyer or a paralegal. I, or you, should have the authority to choose, as per the Charter of Human Rights and Freedoms. I do not think a lawyer who has a conflict of interest in this matter should decide our fate. Morally, I think this is wrong because it's like you're playing God.

If we were governed by the paralegal association of Ontario, we'd be treated the same as lawyers because we'd be governed and the public could have confidence in retaining paralegals in the sense that they could complain if they had a problem, and they would know it's a legitimate profession and business. I would hope that the government would allow paralegals to have a self-regulating body, such as the paralegal association of Ontario, rather than the law society, which has a conflict of interest in the outcome of how paralegals are regulated.

We should carry errors and emissions insurance, but this insurance should be at a lesser rate than that of lawyers because we do charge a lesser rate for our services to the public.

In response to some comments that I heard in the media regarding paralegal programs at a community college, they're usually a minimum of two years, sometimes three or four years. We are very well educated and prepared to practise in several areas of law. Secondly, to address the issue that we are in school less than a lawyer, because some lawyers are saying that we're in school less so we're not as prepared or educated, lawyers take a three-year undergraduate program in any discipline—this can be in chemical engineering or whatever they want and has nothing to do with the law—and then an additional one to three years, depending on whether the lawyer has taken a master of law, a doctorate of judicial science or a master of studies in law. In comparison to that, our education is about the same length, if not more.

If a paralegal chooses to work in a firm under the supervision of a lawyer, I think the legislation should contain a minimum amount that paralegals should make. I myself have worked under the supervision of a lawyer, and they do take advantage of us and give us a low pay rate and have us do all the work. Also, they're saying that we're not capable of this work, yet they make us do all this work, under their supervision, with no help. I've worked under their supervision and done everything all by myself up until the banking; they handle that. So I

don't see how they can say we're not competent if they allow us to do that.

Lawyers should not be involved in the regulation of paralegals either. Also, they should not be involved in handling our money in a trust account. We should be able to hold our own trust account and therefore be in full control and 100% accountable.

I also think paralegals should be allowed to appear in all courts. I don't think it's fair to say, "Okay, they can appear in small claims, but they can't appear in divisional and appeals," because at that point you would have to tell the client, "Well, I can't represent you any more," and they would have to abandon that case. If it's something serious, like the person is hurt or it's something that they can't just throw away, it's hard for that person. If it's only a claim for \$1,000, a person could let that go, but if it's a more serious matter, it's harder for that individual. We would have to stop at that point, and if they can't afford a lawyer, then they have to just accept that fee.

My recommendation is for paralegals to work in the following areas of practice: immigration; family matters; litigation; personal injury; wrongful dismissal; corporate law; real estate; mediation, arbitration and negotiations; provincial offences and anything that deals with the Liquor Licence Act or Highway Traffic Act; debt or creditor law; tribunals and public laws; working with companies such as children's aid societies, Ford—they have legal representatives—SABS representatives and collection agencies.

In closing, to have paralegals restricted from certain areas of practice is prejudicial. If lawyers are so opposed to paralegals, why do they hire us and let us do all the work with no supervision? Some paralegals are equally as competent as lawyers. The recommendations from lawyers are not stemming from their interest in public welfare but an attempt to stop us from taking their piece of the pie, so to speak, because we are competition to them. Lawyers only like paralegals under their belt, where they can make us do everything they are responsible for and pocket all the rewards and give us next to nothing for our hard work and dedication. Lawyers do not want paralegals working independently, where we cannot easily be manipulated or left hanging like a puppet with the lawyer pulling the strings. A question I pose to the committee is: Is this fair?

Mostly, I am talking from experience. On the flip side, I do agree that there are some individuals who carry on business as paralegals but have no formal education, and I think there should be something in place in the legislation to prevent this from happening.

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Also, I am speaking of lawyers' misconduct, but I'm not here to say that lawyers don't make mistakes or paralegals don't make mistakes. All I would like to see is that we have a choice in representing our clients and the clients have a choice in retaining us. I don't think this bill should be passed if the only goal is to make it impossible or to hinder or prejudice paralegals from practising what, by right, is morally and humanly just.

My questions that I pose to the committee:

What is your main objective in regulating paralegals and how are you going to accomplish this?

If you are going to choose the law society to govern paralegals, how is that going to take effect?

If you guys choose the law society, how will you ensure that they are acting impartially and what complaints procedures will be in place for this?

What areas will you allow paralegals to practise in?

Will you make this bill a public hearing?

Will you allow paralegals to hold a seal and be able to sign as a commissioner for taking oaths?

Will eligibility, standards of conduct, complaints procedure and disciplinary guidelines be implemented in the legislation?

Thank you.

The Chair: Thank you. There are about three minutes for each side. We'll begin with the government side.

Mr. Zimmer: Thank you very much for taking the time and sharing your thoughts with this committee.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you for being here. I just want to clarify something Mr. McMeekin said when I was absent, that I was suggesting no one had talked about self-regulation. That wasn't my point at all. No one was suggesting, realistically, that self-regulation could occur over a six-month period. I think anyone sitting on this committee should realize that it would require withdrawal of this legislation and introduction of new legislation to establish a regulatory structure, etc. That's just to clarify that so that Mr. McMeekin understands my view of that.

I appreciate your being here. Your concerns are shared by a great many of your fellow paralegals. What has been raised by a number of people who have appeared before us, and Mr. Kormos raised it earlier today as well, is: as an option to the Law Society of Upper Canada, regulation by the government through the Ministry of Government Services, with the intent of ultimately moving to self-regulation. Have you given that any thought? Do you have a view on that?

Ms. Muraca: Yes, that would be a beneficial option.

Mr. Runciman: How long have you been practising? I missed your opening comment.

Ms. Muraca: I've been practising for a year.

Mr. Runciman: Oh, just a year, so you're new to the business.

Ms. Muraca: Right.

Mr. Runciman: Our previous presenters, who'd been with PPAO—do you have errors and omissions insurance?

Ms. Muraca: No, I was working under a lawyer's supervision.

Mr. Runciman: So that's not required?

Ms. Muraca: No.

Mr. Runciman: Thanks again. We appreciate you being here.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. Muraca, please don't go.

Ms. Muraca: Sorry.

Mr. Kormos: Are you from the Toronto area?

Ms. Muraca: No, from the Hamilton area.

Mr. Kormos: Great. It's very important that we get the point of view of somebody who is out there in the trenches, on the front lines. I agree with you about lawyers having short arms and deep pockets when it comes to paying their staff, which is why I've long-time felt that what we need is a broad-based movement to unionize staff in law offices, because they do do most of the heavy lifting, especially when it comes to things like real estate deals and a whole lot of solicitor work. So I very much appreciate you coming.

We just got a written submission from somebody called Worrick Russell. I'm not going to comment on his comments, but if in fact this is a real account from a lawyer—and I can only assume that it is: May 24, to instructing law clerk to call client and arrange an appointment, charging 0.1 hours; May 24, to call to client and confirming appointment with client, 0.1 hours; May 25, to instructing law clerk to call client and push back appointment as MT is stuck in court, 0.1 hours, and then the law clerk calling to say, "The lawyer is stuck in court. He can't make the appointment," calling the client, 0.1 hours. This is the sort of stuff that drives people crazy and that the law society doesn't seem prepared or capable of dealing with. Read page 3 of that lawyer's docket. That is absolute crap—if this is a real document, and it looks like one—that a lawyer would charge for instructing his law clerk, then the law clerk would charge for making the call and then the lawyer would charge for instructing his law clerk to say, "I can't be there. I'm going to be in court," and then the law clerk to charge for calling.

You weren't ever asked to do anything like that, were you?

Ms. Muraca: Yes. Something like that, yes.

Mr. Kormos: Thank you, Ms. Muraca.

Mr. Runciman: You should ask her if she's paid \$100 an hour.

Mr. Kormos: And the lawyer is billing 100 bucks an hour for the law clerk—oh, sure. Thank you kindly. Good luck in your career.

The Chair: Thank you very much. We're finished for the morning presenters. We'll be recessing till 1 p.m.

The committee recessed from 1156 to 1304.

The Chair: Good afternoon. The committee is called to order. First of all, I want to remind the committee that there's a research paper in front of them prepared by Ms. Margaret Drent, as requested by Mr. Kormos and the committee.

WORKERS COMPENSATION ADVOCATES INC.

The Chair: Our first presenter this afternoon is Mr. Robert Govaert. You may begin, sir. You have 30 minutes.

Mr. Robert Govaert: I'd like to thank the standing committee for this opportunity to present my views on Bill 14, access to justice.

I'm the president of Workers Compensation Advocates Inc. I've been providing independent paralegal services to the public for over 10 years. Prior to my independent practice, I gained in-house experience as a non-lawyer advocate and received specialized training in assisting injured workers and the disabled with appeals, which included training from the Ontario Federation of Labour and training staff from the Office of the Worker Adviser. My practice is confined to Workplace Safety and Insurance Board and Canada pension plan disability benefits appeals up to the final level of appeal. I do not practise outside my area of expertise, such as Small Claims Court, provincial offences, landlord-tenant, family law. I'm a member of the Paralegal Society of Ontario and a member of the Better Business Bureau of Ontario. I've had no complaints in over 10 years of independent practice.

I was not consulted by the provincial government regarding the proposed legislation to regulate paralegals.

My concerns: Bill 14, section C, amends the Law Society Act to give the Law Society of Upper Canada the authority to regulate paralegals and authorizes the Law Society of Upper Canada to regulate all aspects of the practice of law and the provision of legal services. The government is effectively handing over legislative authorities to a private organization.

The Law Society of Upper Canada is the self-governing body for lawyers in Ontario. The provincial government and Bill 14 fail to consider prior reports to the government on the regulation of paralegals. It is unfair to have the Law Society of Upper Canada regulate paralegals because of the obvious conflict of interest to have lawyers regulating their competition. No other profession is allowed to regulate its competitors.

The government report I'm referring to is the Ianni report, 1990, which noted that if the law society were to regulate paralegals, it would be "placed in a potentially difficult position of having to make decisions on issues where the interests of independent paralegals and those of the legal profession are in conflict." The Cory report, a more recent report, indicated, "It is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the province of Ontario. The degree of antipathy displayed by members of legal organizations towards the work of paralegals is such that the law society should not be in a position to direct the affairs of paralegals." Even the law society itself has indicated that they have not always accepted paralegals as part of the legal services landscape. This is from their own report.

I agree with the recommendations proposed in the Cory report that paralegals should be self-regulated and that the Law Society of Upper Canada should be consulted for their advice and experience on many topics. I agree with the Cory report recommendation that the law society should not be in a position to direct the affairs of paralegals.

The definition of legal services in the proposed legislation is very broad. The legislation does even not recognize the term "paralegal," only the services we provide. Under this proposed legislation, lawyers will be involved in any matter of legal services, which will create a monopoly and increase costs and fees. Paralegals are the lower-cost alternative to lawyers.

Most of my clients could not afford the services of a lawyer. If paralegal costs are going to increase, these costs will be passed along to clients. Exorbitant costs to paralegals will result in the closing of many competent paralegal businesses. This legislation may result in individuals not pursuing an appeal option or proceeding with no representation. This would not be in the best interest of the public.

No one will know the full extent of Bill 14 until it has been passed and the law society develops by-laws and details, but by then it will be too late. How much is the regulation of paralegals by the Law Society of Upper Canada going to cost the taxpayers of Ontario? Specifically, is there a limit on costs or is this a blank cheque? I am sure that the self-regulation of paralegals would be less expensive and save the government and Ontario taxpayers' money. Self-regulation of paralegals, as recommended by the government reports, would ensure true access to justice for the most vulnerable of our society, such as immigrants, women, the disabled and low-income and single parents.

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The 2006 Toronto central west Yellow Pages has 45 pages of advertisements for lawyers. The competition between lawyers themselves is fierce. There are approximately 1,000 lawyers coming out of law school every year. Recent graduates have indicated that there is no guarantee of income once they graduate. I have had graduates call me up for assistance with articling. I am concerned with the additional costs, fees, restrictions and potential limits on areas of practice that may be imposed on paralegals by being regulated by their competition. My concern is being regulated unfairly, rendering it difficult and costly to practise, or being regulated out of business, thus creating a private monopoly for the Law Society of Upper Canada with regard to legal services and access to justice.

I have won additional entitlement and benefits for many clients who had claims previously handled by lawyers. There is no course in law school specifically teaching lawyers about WSIB. Actually, my office even receives occasional referrals from lawyers. For me to work under a lawyer would mean handing over a large percentage of my income for the same work that I'm doing right now. My fees would have to increase accordingly.

Paralegals are in favour of regulation but are against being regulated by the Law Society of Upper Canada, the competition. We should have the right to be self-regulated like other professions.

My first recommendation would be to withdraw schedule C from Bill 14 and introduce separate

legislation for self-regulation of paralegals which is independent from the Law Society of Upper Canada and the provincial government, and which is consistent with the Cory report recommendations. The Paralegal Society of Ontario already has a plan in place for self-regulation. Paralegals should be given a chance for self-regulation.

Considering all the information presented at these hearings and the prior government reports on paralegal regulation, plus the agreement of the law society for their willingness to assist in paralegal regulation, it should be fairly simple to introduce new separate legislation which follows the Cory report recommendations. We submit it is the best option for true access to justice for the most vulnerable people of our province to find affordable access to the justice system.

Knowing that pulling schedule C from Bill 14 is unlikely, in the alternative I ask the following:

Recommendation 2: Add a clause to Bill 14 which will require steps for self-regulation of paralegals in two to three years, following the recommendations of the government reports: the Ianni report and the Cory report.

Another one of my concerns is that convocation is the governing body for the Law Society of Upper Canada and will determine the bylaws that are enforceable regarding the regulation of paralegals. Convocation is composed of 50 members or benchers: There are 40 lawyers, eight laypersons and two paralegals. That's 4% representation in the governing body determining the regulation of paralegals. I would like to think that that was a typographical error which was carried over into the legislation. Is there any regulated profession which has only 4% representation in the governing body that determines their regulations, bylaws and scope of practice?

In addition, 40 lawyers sounds expensive. Are we going to have to pay for that? Are we going to get a bill whenever they look at a regulation? Again, how much is the regulation of paralegals by the Law Society of Upper Canada going to cost the taxpayers of Ontario per year? Is there a maximum, or is this a blank cheque? How much is it going to cost the independent paralegals?

The legal services provision committee makes recommendations to the Law Society of Upper Canada convocation regarding bylaw changes as they relate to legal services and is composed of the following 13 persons: five paralegals, five lawyers and three laypersons. Convocation has the power to overrule the recommendations of the legal services provision committee and provide their own recommendations. I submit that the legal services provision committee is only for show and is useless.

Recommendation 3: The legal services provision committee should be given the powers of the governing body to regulate paralegals, to determine what bylaws are enforceable. I recommend specifically indicating in the legislation that the legal services provision committee should be independent from convocation and independent from the provincial government. This would at least appear to follow the Cory report recommendations. I propose the composition should be composed of 13 per-

sons: seven paralegals, four lawyers and two laypersons. You will note the majority of the governing body should be paralegals. The initial paralegal benchers should be chosen by a paralegal organization, and I propose the Paralegal Society of Ontario.

Another concern is that Bill 14 is very specific when it describes how to prosecute paralegals, but it does not indicate the scope of practice. Even the law society task force consultation paper indicated the scope of practice for paralegals, as follows: Small Claims Court; Provincial Offences Act; tribunals, agencies and boards that allow for appearances by agents.

Recommendation 4: Scope of practice should be written into the proposed legislation.

Cost of licensing examinations and grandparenting existing paralegals is another concern. Many paralegals confine their practice to limited areas; for example, Small Claims Court, Highway Traffic Act or WSIB. If grandparenting paralegals will be subject to the costs associated with writing licensing exams, for most likely both a general licence and a specific licence, this could be very costly to both the paralegals and to the Law Society of Upper Canada.

Examination preparation will be one of the largest expenditures with paralegal regulation, and the costs would have to be multiplied by the number of licences. This is from the law society itself indicating this.

Recommendation 5: Legislation should include exemptions from the licensing examinations for grandparenting paralegals. This will save costs. An example of the criteria may be independent or supervised experience in three out of the last five years, and two references.

Another concern is that being regulated by the Law Society of Upper Canada should include some benefits to paralegals. We're going to be regulated by them.

Recommendation 6: Legislation should specifically indicate that the same benefits lawyers receive from the Law Society of Upper Canada should be extended to paralegals, including a referral service.

I thank you very much and I'm willing to hear some questions if you have any.

The Chair: Thank you very much. About five minutes each, beginning with the official opposition.

Mr. Runciman: Thanks for taking the time to be here and to devote as much time as you have to the preparation of your submission; it's quite comprehensive.

You don't talk to—although, in a sort of peripheral way, I guess you're referencing it—your concern about the makeup of the governing body and the fact that two paralegals will be your only representation, the 4% representation that you reference here. If that were amended and you were given, as I think one of the previous presenters suggested, an associate membership in the law society—right now you're going to be paying in and not even having the privileges of membership—

Mr. Govaert: Correct.

Mr. Runciman: —do you think that would allay your concerns or some of the concerns of your fellow paralegals?

Mr. Govaert: Change the composition to—what do you propose?

Mr. Runciman: Well, a more representative number, and provide you with either associate membership or full membership.

Mr. Govaert: If we are forced to swallow this legislation, I would hope to have all the benefits of being part of the Law Society of Upper Canada. The composition should definitely be at least a majority of the regulatory body. I believe I heard a few days ago from a member of the government that he's not aware of any profession that has less than half of the majority part of the regulatory body.

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Mr. Runciman: I know you are advocating self-regulation. That came up earlier today about the feasibility of moving in that direction when the government is this far down the road. I think you're right to be skeptical that it's going to happen. But I think one of the things that's been talked about by a number of witnesses—Mr. Kormos raised it earlier today and I referenced it with one witness earlier as well—which is a feasible alternative and certainly worthy of consideration, is regulation through the Ministry of Government Services, with the full intention to move toward self-regulation at some point in the future. Certainly that's happened with a whole range of other areas. Real estate is one that I was directly involved in. So it's something that you can have control through the government, and when the organization itself has matured to the point where it can handle those responsibilities, then the changeover occurs. How would you react to that as an option?

Mr. Govaert: I agree with that. That sounds along similar lines to the initial government report, the Ianni report, in which he mentioned control under consumer relations, I believe it was.

Mr. Runciman: Yes. What about the use of the term "paralegal." That's been omitted from this legislation as well. Do you have any concerns about that?

Mr. Govaert: I did actually mention that in my submission. It's unreal. We're going to be regulated, but now we can't even call ourselves a paralegal any more?

Mr. Runciman: Why do you think that is?

Mr. Govaert: Because there won't be any left.

Mr. Runciman: No, I think there's more to it than that. I just wonder what your views are and what drove that surprising direction from the government not to even—we're regulating paralegals but we can't use the term "paralegal."

Mr. Govaert: It's beyond me. I can't swallow it. I don't know. I don't know what they're thinking.

Mr. Runciman: I'm starting to reach some suspicions about what happened there, but in any event, thank you very much for being here.

Mr. Kormos: Thank you Mr. Govaert. I appreciate it very much. You're right: People who have expertise in workers' comp, WSIB, are very skilled. The area is very narrow. Most lawyers neither can nor are they interested in doing that kind of work; similarly with small claims

work, as well as highway traffic work. We had Mr. Lawrie and Mr. Parker here this morning and Mr. Saunders is here this afternoon.

One of the hurdles is the clear statements by Ianni and by Justice Cory about the inherent conflict of interest. Mr. Zimmer over there knows that conflict of interest is perceived conflict of interest as much as it is cash register conflict of interest. That's one of the hurdles.

The other hurdle, I suppose, is that the government's expecting you and other paralegals to sign a "trust me" contract, "Don't worry. Trust us." That's coming from the government.

Mr. Govaert: That's what we hear from lawyers too.

Mr. Kormos: I know. It seems that the real thrust is the scope of practice. If you boil it down—and maybe I'm wrong; I'm going to talk to other people about that—it's the issue around scope of practice. What are paralegals going to be permitted to do? At the end of the day, is that one of the real fundamental issues in your analysis of it?

Mr. Govaert: If it's actually written down in the legislation, then it can't be really taken away.

Mr. Kormos: Quite right, but is that the nub of the issue as far as you're concerned? There are all sorts of things.

Mr. Govaert: The major issue is being regulated by the competition. That's my biggest issue.

Mr. Kormos: But the fear, in that regard, is that you'll be denied access to certain arenas in an unfair way, right?

Mr. Govaert: That's correct. The law society can come around and say, "You can't practise at this level."

Mr. Kormos: That's the fear. So what it comes down to is, what is going to be the scope of practice of paralegals, right?

Mr. Govaert: Correct.

Mr. Kormos: I ask you this because I suspect that, like the rest of us here, you pay taxes. Like the rest of us, you probably don't like paying taxes, but then again, I don't like paying for gas in my truck either. But do you expect your legislators to make the decisions, like scope of practice, rather than passing the buck off to an unelected body of benchers from the law society?

Mr. Govaert: I don't feel comfortable with that at all. I feel the government has actually handed over legislative authority to a private organization. If people are not happy, they can actually vote you out. I'd rather hold yourselves responsible.

Mr. Kormos: Thank you very much. It's an important contribution. Eduardo DiSanto is coming this afternoon and he's in a similar line of work as you are. I hope he's going to be here. I'm interested in hearing what he has to say.

There are some problems here, and I agree with Mr. Runciman. First, when Mr. Zimmer wasn't coming to committee—he's the parliamentary assistant—I thought maybe the government was just going to let this derail, but there it is, he's back, Zimmer's back, and maybe the government's going to force this through. That then takes

us to the second stage: What can we call upon the government to do to make this unpalatable, from your point of view, proposition a little easier to take? And that's what you've suggested today.

Mr. Govaert: I would also suggest—I talk to many clients, to family and friends. They have no idea what's going on here. They're totally shocked and offended that paralegals will be regulated under lawyers. They have no clue. I think it's just astonishing that the general public is not aware of what's going on.

The Chair: Government side?

Mr. McMeekin: I appreciate your presentation. It appears to be in sync, consistent with a number of others that we're hearing, particularly related to the option of self-governance. As you probably are aware—you've obviously been monitoring some of the presentations—there have historically been some difficulties with that. If we can find a way to mitigate that, that would be helpful. Mr. Runciman referenced one. That may be an option. There may well be others.

Somebody made a generic reference to, "Give us time and some of the tools to do the job around self-regulation and watch us." I'm wondering if you might address what tools you think might be needed in order to empower paralegals to actually move forward on the self-regulation front.

Mr. Govaert: I appreciate your question. Like I said, if the government can pull schedule C and introduce separate legislation for paralegal regulation—give some legislative teeth to a paralegal organization. The Paralegal Society of Ontario has a plan in place but there's no obligation of paralegals to become members, and I think maybe that could be the problem. If legislation forces paralegals to become members of an association and to be regulated by that association, your problem will be solved. That's why I think it's not very difficult to pull new legislation in. Everybody's in agreement here.

Mr. McMeekin: We want to solve our problem. We need to do maybe a little outside-the-box thinking here and revisit this with that kind of enabling wink—yes, nod.

Mr. Govaert: I agree.

Mr. McMeekin: Yes, okay. Thanks. That's good.

Mr. Govaert: Thank you very much.

TRAFFIC VIOLATION SPECIALISTS

The Chair: The next presenter is Mr. Don Saunders of the Traffic Violation Specialists.

Mr. Donald Saunders: Good afternoon. First of all, Mr. Chairman, with your permission, I will provide a copy of my presentation at the close of my talk, which should be in about 12 to 15 minutes, if you don't have any objections. If you do, then by all means you can have them now.

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The Chair: Go ahead.

Mr. Saunders: Thank you, sir. I'd like to take this opportunity to provide information that you may want to

consider in your deliberations of Bill 14. I consider myself privileged to make this presentation, especially when I see the panel. Some I've never met, but certainly I've watched them on TV, and then I just heard the previous gentleman. I honestly feel honoured and privileged for this, and I also feel a daunting responsibility to represent others who do the same type of work as I do.

My practice is restricted to representing persons charged under the Highway Traffic Act. I do not do civil litigation, preparation of wills, immigration work or any other court work.

My background: I have developed and practised over my career as a police officer—25 years in Toronto—from a constable up to a staff sergeant, and then on to chief of police in Charlottetown for five years. During that period of time, I've developed a deep and abiding respect for the judicial process and legal principles. I have championed these as a teacher with 13 years' experience, teaching young persons who were pursuing a career in policing, and with my 11 years as a professional paralegal.

It is with this background that I appear before you this afternoon to express my thoughts on Bill 14, legislation that will ensure that the average person with limited financial means has access to retain the assistance of a paralegal's experience.

Professional accountability: I would respectfully suggest that one of your challenges as legislators is to bring needed accountability to the paralegal profession in Ontario. With proper legislation, you can make paralegals legally accountable for their actions—which is not the case today—first, by requiring a paralegal to be licensed for a specific area of law which the paralegal will be practising, and second, by establishing a self-regulating board of governors that will, in turn, create a code of conduct, rules and regulations, policies and procedures, investigation protocols, hearing process and enforceable sanctions.

Affordable representation: Licensing paralegals in specific areas will continue to provide access to justice for the average citizen who can't plug into the legal aid system—though I would interject that there is no legal aid—or can't afford a lawyer.

Many of the people I represent just don't have someone to speak on their behalf to a prosecutor or to the court unless they hire an attorney. These have included bank clerks, housewives, students and persons referred by an attorney. The average citizen who suddenly finds themselves facing a court experience and all the anxiety that involves needs an affordable advocate.

For most Ontarians, attending court and facing a judge is a daunting experience. The experience is even more intimidating if the defendant is going to give evidence and be subjected to cross-examination. Even the educated and sophisticated need an experienced person to inform them of their rights, explain the legal process and prepare them for what to expect in court. This is a service that paralegals provide.

Having affordable access to justice as provided by paralegals enables the average citizen to have their day in

court without feeling they've been deprived of justice because they couldn't afford a lawyer.

Mr. Justice Peter Cory, as you are well aware—you heard his name mentioned by the last speaker; I'm sure you've heard others—formerly of the Supreme Court of Canada, recognized the role of paralegals when he stated:

"The importance of legal services to society is self-evident. The public needs access to adequate, effective, affordable legal services. To increase access to justice in a manner that protects the public must be the aim of the legal profession—which is well-represented at this table—and the goal of society. Paralegals have a significant role to play in increasing public access to legal services."

Self-regulation of paralegals: I am here to recommend that schedule C be withdrawn from this legislation and that the government and paralegals work together to establish a self-regulated program for the licensing of paralegals. This is the only way that paralegal regulation and access to justice can be accommodated in one piece of legislation.

Let me give you an example from my own background as a police officer here in Toronto and as a chief of police. Police services boards don't regulate or oversee private investigators or the private security system, nor does the private security system regulate or oversee the province's police services. It would be preposterous for someone to even suggest such an arrangement. That is what Bill 14 recommends or proposes.

I support 100% the Honourable Mr. Justice Cory's position that, "The protection of the public and proper functioning of the courts, boards and tribunals urgently require the establishment of a system of licensing and regulating paralegals"—no argument there—and his recommendation that, "The province of Ontario should enact legislation for the regulation of licensed paralegals and delegate to a corporation which functions independently of the Law Society of Upper Canada and the government of Ontario the responsibility of regulating paralegal practice"—their responsibility, not the law society's.

Grandfathering clause: Before closing my presentation and attempting to answer your questions, I would like to deal for a few moments with a most important aspect of the legislation you will be presenting to the Legislature: a grandfathering clause. I am a grandfather, so I know some of the problems that go with it, but also the joys that go with being a grandfather.

It is my view that the essence of paralegal practice is specialization. My experience and area of practice is traffic court. This legislation would specify that practising paralegals with a minimum number of years' experience are exempt from qualifying under the regulations. This grandfathering should be based on sectorial practice or special skills. Paralegals should not be required to demonstrate knowledge or develop skills in areas of law in which they will never practise.

Alternatively, the legislation may be amended to require the regulator to develop specific examinations or

evaluation criteria based upon sectorial practice. Many experienced paralegals would find their careers over if the legislation were passed in its present form. However, should these paralegals be grandfathered into their specific area of specialty or expertise, such as traffic court, small claims—the gentleman who was here a few moments ago—workmen's compensation, Co-operative Corporations Act, tenant protection, immigration act, most current paralegals will be able to continue to practise if they're restricted and licensed for that particular area. The average citizen needs these services at a reasonable rate. Ontario cannot afford to lose this wealth of experience and knowledge.

I think this is the proper time to insert the information I'm about to give concerning our courts. What I'm going to say is not an in-depth survey or anything like that. On Tuesday morning, I was in court in Lindsay. At that time, it was what we call provincial offences court, traffic cases. I had been in, I had one case; another paralegal had 10 to 14; another a couple. There was one lawyer and he had two cases. I left, and then I had to go back into the court. On walking out, I suddenly realized that here are 30 or 40 citizens, average people from all walks of life. They're sitting in court and there isn't anybody to speak on their behalf. Yes, there's a crown attorney. I respect the crown attorneys, and I guess if I had another life, I would have been glad to have been a prosecutor, but I'm not.

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Suddenly, it dawned on me: These people are sitting there, they don't know which way to go. They know they walk up to the front and speak to the prosecutor but, other than that, they're strictly in the hands of the system. So I made a couple of phone calls and asked a couple of prosecutors, one in Peterborough, where I basically work out of, and the other in Lindsay, "Just give me a ballpark figure: How many cases do you have in an average day?" In one particular court, it was 113. That's a lot of people. That's not 113 names on a list, because we all know, those who have been to court, you may have one person charged with two or three or more offences. That's 113 people. In that particular court, 2% had an attorney; 22% had an agent. That leaves 76% having no legal representation. I find this really astounding.

For the other court, it broke down in their case that they averaged 45 to 60 in the mornings and 15 to 20 in the afternoons. There again, the average is about the same: 1% to 2% had an attorney, 20% had an agent, 78% had no legal representation. I would suggest that that will go much higher if schedule C is not amended.

In closing, my presentation has addressed the importance of passing legislation that would:

- require a paralegal to be licensed for a specific area of law which the paralegal will be practicing;

- establish a self-regulating board of governors. We're all familiar with self-regulation. Look at our own families. We aren't controlled by the neighbour next door or the neighbour across the street; our parents did it. That's self-regulation, and there isn't any reason why paralegals can't do the same;

- provide affordable access to justice to the average citizen;

- provide for grandfathering of paralegals on an individual basis, testing them only in their specific area of practice.

I would add, aside from testing, that I wouldn't have any objection whatsoever to being required to provide references from the judges, from lawyers in Peterborough or Lindsay. I have no problem. If I've done anything wrong, I don't get the reference, I don't get licensed. That's fair ball, but that's on a personal basis rather than just generalities.

Are there any questions? I want to thank you for your attention.

Mr. Chairman, if you'd like to hand out those hand-outs now, I don't have any objection whatsoever.

The Chair: Okay. We'll do that.

Mr. Saunders: I'll do my best. I don't promise to be able to answer your questions, but I'll do my honest best. That's all I can do.

The Chair: Thank you very much. Mr. Kormos, five minute each.

Mr. Kormos: Thank you very much, Mr. Saunders. A very important contribution to the hearings, especially in view of your diverse background. What years were you a police officer in Toronto?

Mr. Saunders: I started in 1949 in Etobicoke and left at the end of 1974. I shouldn't elaborate, but I will for a moment. Etobicoke—if you were a suburb, you were taken over. If you were a member of Toronto, it was amalgamation. Anyway—

Mr. Kormos: Yes, I understand that principle very well.

Mr. Saunders: I carry on. To the end of 1974, I had been a staff sergeant in traffic for quite a while, and I had the privilege of going to Prince Edward Island as the chief of police for five years. One of the things that that gave me was the opportunity to become a member of the Canadian Association of Chiefs of Police. In fact, I'm now a life member. I became involved with the law amendments committee right off the bat, and this gave me an understanding of the role that police agencies have to make presentations to justice committees. So I'm certainly in favour and that's why I feel privileged to appear before this committee today, sir.

Mr. Kormos: We're privileged to have you here. We've only had one judge come before the committee, a deputy judge from the small claims court. It was a valuable contribution, and I say to you and to my colleagues, why we haven't had a chance to hear from more JPs, provincial judges, especially family court provincial judges, amongst others, beats the life out of me, because we could probably get as good an insight as any into the types of people appearing before them who are not lawyers, advocating for folks. I think you raised that point very effectively.

Look, the law society, as one of the participants early today gave us the most recent—I don't know whether it's a bi-monthly report; it's the magazine they publish—

showing lawyer after lawyer after lawyer who's been disciplined, including disbarred. The law society appears to not be reluctant to disbar bad lawyers, right, to suspend them and require them to do all sorts of things. Why wouldn't you and the rest of Ontario say, "Well, if they can do that with lawyers, why can't they do that with paralegals?"

Mr. Saunders: First of all, I agree with that, and I've been very careful not to knock the law society other than in quoting, once, Mr. Justice Cory, as far as the law society goes. But I would suggest that the law society would be quite upset if a group of private citizens had the authority to regulate the lawyers or if the paralegals had an organization and government gave the paralegals the right to legislate lawyers and to punish them and so on. I would think they would legitimately be upset.

Mr. Kormos: But wait a minute, Mr. Saunders. There you go, Mr. Zimmer: What's sauce for the goose is sauce for the gander. We could just change it to the Paralegal Society of Upper Canada and have it dominated by paralegals, but then give it the supplementary role of regulating lawyers. Isn't that interesting, Mr. Saunders? That's, in Swiftian terms, probably a relatively modest proposal.

Mr. Saunders: Basically, I would think it would be most unfair, obviously. It would be most unfair for either party to be regulating the other party. Doctors, nurses—they regulate. Almost every profession that one looks at is self-regulating. Why not paralegals?

Mr. Kormos: Do you function out of an office or out of your home in Peterborough?

Mr. Saunders: Peterborough.

Mr. Kormos: How do people get hold of you?

Mr. Saunders: I advertise in the Yellow Pages and by word-of-mouth.

Mr. Kormos: And how is it listed in the Yellow Pages?

Mr. Saunders: Paralegal.

Mr. Kormos: Under paralegal? And what do people look for, "Donald Saunders"? Is that how you're listed, or Traffic Violation Specialist?

Mr. Saunders: They look under Traffic Violation Specialists.

Mr. Kormos: So if somebody wanted to hire you from the Peterborough area, they would go to the Yellow Pages under "paralegal", go to Traffic Violation Specialists, or they could go to the white pages and just look up traffic violation specialists.

Mr. Saunders: They would have a problem there. It would be the Yellow Pages.

Mr. Kormos: So Yellow Pages, paralegal, Traffic Violation Specialists. That's how you're listed, Mr. Saunders, huh?

Mr. Saunders: That's correct, sir.

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The Chair: Thank you very much, Mr. Kormos. The government side.

Mrs. Van Bommel: Thank you for your presentation. I'm certainly interested in your grandfathering clause

concerns, and I have to agree, it should be done by sort of a skills set. It'd be not much different from asking a chicken farmer to have detailed knowledge of a dairy cow.

Mr. Saunders: It's a good analogy.

Mrs. Van Bommel: So I can understand why you would say that, but later on, you qualified that with the good character issue, and that was my concern out of the grandfathering issue, the fact that, as much as lawyers have disreputable practitioners, we do also hear of paralegals who are unscrupulous in their practices as well. So how would you make sure that those particular individuals don't get the accreditation as a paralegal under a new system?

Mr. Saunders: I unfortunately can't answer part of that, but I can answer for the area that I specialize in, traffic court. I wouldn't have any hesitation whatsoever in asking a couple of the prosecutors, a couple of the judges, "I've appeared in your court. Are you prepared to give me a reference to continue?" If they say no, then that's it, I've deserved it and I would let it falter.

I unfortunately don't have the ability to know how you would regulate the other areas unless possibly the same areas. Well, maybe immigration. That's one of the areas where I hear from time to time that there's a problem. I don't know of any of those personally, okay? But if that's an area, then go to the lawyers in that area and the judges, the people in the tribunals, and say, "Do you have a problem with so-and-so?" If you do, once again, I feel that most paralegals I know are prepared to have their track record stand and be counted. That's the best way I can answer that.

Mrs. Van Bommel: Another question: You talk about self-regulation. One of the things that's come up repeatedly is that paralegals don't have one particular organization that they belong to. There's been mention of a number of them. Are you a member of any paralegal organization?

Mr. Saunders: No. As a matter of fact, I'm not.

Mrs. Van Bommel: Is there a reason for that?

Mr. Saunders: Yes, there is. Because I checked into it. There were three or four, and at that point a number of them were good, and in some of the material that I presented today, I got research, I got assistance from—but I didn't feel that there was a need for it. First of all, there was no legal requirement for it, and I didn't see the actual advantage to me personally. But having said that, I would have no hesitation whatsoever if legislation is passed that paralegals shall be members of a recognized association and that they be licensed in that area. I could fit into that very comfortably.

The Chair: Thank you, Mr. Runciman.

Mr. Runciman: I join with the other members, Mr. Saunders, in thanking you for being here today. If I ever get in trouble in traffic court, you're the kind of guy I want to have represent me, no doubt about it.

One thing that you made reference to, being a life member of the Canadian chiefs association—I don't expect comment on this, but I mentioned earlier my dis-

appointment in the fact that the Ontario chiefs have declined to participate and offer their advice and assistance to this committee in terms of this legislation, not necessarily the paralegal components, but all of the other impacts on the justice system that this legislation includes, many of them affecting the operations of police services and the courts across this province. For whatever reasons, they have declined to participate, and I think that's, certainly from my perspective, a significant disappointment, and I think should raise some questions and some issues from their own membership.

Mr. Saunders: Sir, I will answer that.

Mr. Runciman: I'd appreciate that.

Mr. Saunders: Now, I may get in hot water, but no. That's one of the reasons that I'm here today. I feel that if I stayed at home and said nothing, didn't make a presentation, then why should I be surprised when certain legislation is passed? I have a belief; I'm here. I go back to the Canadian Association of Chiefs of Police experience that I had. Being on the law amendments committee, they made a presentation to our federal Parliament. At that time I was teaching at Sir Sandford Fleming College, and I took down a vanload of students. That was a most informative afternoon. It's like you've said. There were issues on the table, and the chiefs spoke to those issues. Whether the people liked it or not, that's not the point. They're part of the justice system, the police department are part of the justice system, and they should be making input into it. Why be critical of the laws that we have or don't have if we're not prepared to stand and be counted? So I'm sorry, sir, but that's the position I take.

Mr. Runciman: Well, so do I. I appreciate you putting that on the record.

One quick comment, and Mr. Kormos was touching on this, is the government's decision that we're going to regulate paralegals but, mysteriously, there's no reference to paralegals in the legislation; the word is verboten. When you look at Justice Cory's quote which was provided by the previous witness, which is pretty strong with respect to his view of the law society being the regulator and his feelings that that shouldn't happen—and we certainly know about the suspicions, and in some areas direct animosity—I guess to me this failure to use the word “paralegal” in this legislation tends to reinforce the suspicions that people have about the motivation behind this in terms of reducing the number of people providing competitive services in the province of Ontario. Would you share that view?

Mr. Saunders: Well, I would share part of it. I am not privileged to know the whys and wherefores of how the law society arrived at their position. But I do share the view, sir, that any time you start to change something—it's taken a while for people to understand what paralegals were. When I first started, it was, “Paralegal? What's paralegal?” So now people are getting educated. Now we turn around and wipe this off the books and we talk about “agents,” and now you could be into almost anything.

Mr. Runciman: Right. Thanks very much.

The Chair: Thank you, Mr. Saunders.

DAVID CLANCY

The Chair: Next we have David Clancy. Is Mr. Clancy here? Good afternoon, sir. You have 20 minutes, and you may begin.

Mr. David Clancy: Please forgive me, but I have a little hearing problem.

The Chair: Okay. You have 20 minutes to make your presentation.

Mr. Clancy: Yes. I hope that I'll be able to do so. Did you receive my little note that I sent up?

The Chair: Yes, we did.

Mr. Clancy: If I may explain to the assembled group that by prearrangement with the clerk and by a request submitted to the Chair, I have first said that I myself will ask no questions of the committee. I ask that I just be allowed to use my time to say my piece and to leave and that I not be interrupted with questions from the committee, which would tend to take away from my time.

1400

Mr. Runciman mentioned a few moments ago the animosity that exists with some people with regard to the law society and their behaviour on the subject of independent paralegals. I can assure Mr. Runciman that I do indeed come from that position, and it's a position at which I have arrived after a number of years working in the field, as indicated on the first page of my statement. I am now retired and I therefore have no further personal interest in what happens here, but I am very much concerned about the public and the public interest and the fact that the public has not been told the truth by the law society or by the Liberal Party about Bill 14. So that is what my object today is, to try to register some of that truth on the record in the hopes that perhaps somebody out there in the public will hear it and perhaps begin to realize what's really going on here.

I wish to begin my statement by simply reading my script, which I have in front of me and which you have as well, I believe.

I say, first of all, good afternoon to the members of the hearing subcommittee. I am, as you shall hear, vigorously opposed to Bill 14 because I believe it to be, and I insist that it is, not a bill about regulation at all in the proper and normally understood sense of that term as relates to regulation of other fields and occupations. It is, rather, a contrivance deliberately sent forth to deceive the public while in fact intended to achieve ends which have clearly been identified in both the Ianni report and the Cory report as being utterly contrary to the public interest.

As you know, these are Ontario government studies funded by Ontario taxpayers, both of which—and Dr. Ianni's report especially—commended these independent services at affordable prices established in the marketplace as being very much in the public interest, and both regarded it as prudent that they be regulated so as to give the public some confidence of government supervision,

as in many other occupations with protection and recourse for all as against the unsatisfactory occasional operator who could be expected to come along in this occupation as in others.

Each report made clear to the government that while regulation of independent paralegal services certainly would be in the public interest, it would be so only if the services continued to be delivered to the public in a system which did not involve the law society. The obvious, blatant and overwhelmingly powerful conflict of interest with regard to the law society as custodian or regulator of these services could not and would not be overcome by the law society, which could be expected—and, I would add, is still expected—to do about the paralegal option in the public marketplace one thing and only one thing, and that would be of course to simply kill these services, taking them off the market and away from the public. The pressures and the temptations would be so strong upon them that they would not be able to resist. They just would not be able to help themselves.

I say this would apply to lawyers in the assembly as well as to all the others, as has indeed turned out to be the case. Both the Liberal Party and the law society are of course well aware of these facts, and they have long since vowed to make sure that Dr. Ianni's fine report in particular would never become the law in Ontario, the public interest notwithstanding and in utter defiance of the public interest. Therefore, the ends which will issue forth from Bill 14, the law society agenda, are in fact the precise opposite of the public interest as set out by Dr. Ianni, and this government and its cronies at the law society have gone to very great lengths to make certain, and deliberately so, that the people shall not be told the truth about Bill 14, and it has been the precise opposite of the truth which the people have been told and continue to be told to this day.

The lawyers say that they will regulate, but, just as foretold by the government studies, they will do no such thing. They will destroy these services in pursuit of monopoly profits. If this is not the case, then what is the purpose of the blanket of silence? I respectfully submit that there can be no other reason.

And yes, this does mean that I am suggesting that both the Liberal Party and the law society have engaged in what can only be described as misconduct of a serious sort, not in aid of the public interest but in service of the private law society agenda, which is very much and very deliberately against the public interest, and this fact is being hidden from the public. Therefore, I maintain that, by design, absolutely no substantive truth has been told about Bill 14 to the people of Ontario, who will not be the beneficiaries of this bill, for they are instead its intended victims.

The managers of this bill have made certain that no substantive debate has taken place with respect to it, and they have made certain that any public statements made by any of their people will at least not enlighten, and, if possible, will actively and positively mislead. In addition, it certainly seems as if someone somewhere has gone to a

great deal of trouble to make certain that the news media in Toronto have taken no significant editorial or news interest in these highly unusual and newsworthy events which I am describing. After all, how often do we find the government of any province inviting an outside private interest group into the assembly and turning the facilities over to them for their own private law-making use in service of their own private interests and against the public interest, as noted by many impartial commentators in the past? It is as though we have, for a little while at least, a guest government, as it were. It certainly seems like something which newspaper readers would consider to be interesting news.

So in my time remaining, I intend to do my bit to squeeze in as much truth as I can for the people. I of course speak to you, but the message is intended equally for the public.

Specifically, I intend to demonstrate—and we will come to this a bit later on—as well as possible in these few minutes just how far and to what extent the law society and its allies in government have gone to mislead and misinform the people of Ontario with regard to these matters.

When independent paralegal services first began to appear between three and four decades ago, the public reacted strongly and favourably. In a few short years, a significant market in these services was established between the people and the independent paralegals, one which has continued to grow to this day.

This market was, and has continued to be, based upon some basic points which were recognized both by service providers and by consumers:

First, and most important, it quickly became clear that, for the broad array of low-end services which these paralegal services were providing, no law school education was necessary. It was found that any reasonably intelligent person, with a certain amount of orientation time, could do an acceptable job of providing these services to the public. It was true then and it is still true today. It is ironic in the extreme that as we sit here pondering the pending removal of these services from the people, the people are still keeping the services very busy as we speak.

Now, if a service can appear on the market and be satisfactorily delivered by people without law degrees, then why should the public have to pay for law degrees? Public policy in almost all other areas of goods and services is aimed at making certain that the market works to the lowest feasible prices which still put the goods and services on the market. There can be no public policy argument which would justify higher prices than are necessary to accomplish that purpose. The lawyers inside and outside the Legislature, however, are in effect claiming to be exempt from this basic principle, and they will go to the extreme of abusing their power as legislators to secure that special status, even at the expense of their fellow citizens and their constituents. They claim entitlement to what amounts to a tax or a subsidy for them and their lifestyle.

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The next section is essentially a little treatise on the subject of monopoly pricing, which is the object of Bill 14. Without stopping to go through it in detail, I'll simply indicate what I'm sure everyone here is aware of, and that is that the true value, the true market price, of the services which independent paralegals have been providing for all these years is the price arrived at between them and their customers. Therefore, when they are gone, as they soon will be, when they are no longer in the market, there will be no check on what the prices will be for these services, the exact same services, coming from law firms and individual lawyers. I submit that the difference between the true market price established in the market between paralegals and their customers over the years and the price that is going to be charged in the future by lawyers, once they have successfully shed themselves of paralegal services, is in fact a monopoly profit, an excess profit which is not justifiable in any economic sense of the term. Therefore, Bill 14 is all about establishing that kind of a situation in the marketplace.

Any providers who can make laws which drive consumer alternatives off the market, as is being done with Bill 14, put themselves in a position which is denied the rest of the population, which does not get invited in to write and pass their own laws. They have a monopoly, and that is true whether we are discussing paperwork divorces or widgets. They can add on almost as much of a surcharge above the true market value of the service—if there were a market—as they would wish, because their customer or their client has nowhere else to turn.

A typical example used on this is to note that the actual true market value of the above-noted paperwork divorce is now about \$300 plus disbursements, as charged by an average paralegal service. Right now, with paralegal services still in the market, law firms are somewhat constrained in what they can charge. And I will just add here the comment that this means that even the people who go to law firms benefit from the existence of paralegal services, because the law firms can only charge so much more before people start looking for another place to go. The object of Bill 14, of course, is to make sure that they have no other place to go at all, ever. It would now typically be, I'm estimating, \$1,500, or about five times as much as the exact same service from a paralegal service would cost. Once you get your Bill 14, these paralegal services will disappear, at least for a while, and the sky will be the limit.

So we go on to come to the conclusion that under circumstances such as this—all the protestations of Mr. McGuinty's Liberals, all the claims being made by the law society and by the people who have created this bill in the Ontario Legislature notwithstanding—it becomes clear and actually quite easy to see from this example that Bill 14 is an attack on the public, not a boon to the public.

You may say, "Wait a minute. What about the fact that these paralegals are not lawyers and are therefore not qualified to do this or that service?" With respect, you are

many years too late for that argument. We are talking here about a 35- to 40-year market that is being destroyed. After all these years, and with all those thousands of satisfied customers served at fair market prices in cases of many different kinds, that argument will not wash, and the people know it. And, of course, it is just exactly that thriving market at true market rates which brings Bill 14 and brings us here today.

The law society has tried many different ploys over the years to convince or to force the people to stop using these services. They have over the years kept up a constant drumbeat about all those "bad" paralegals out there. But it has, of course, always been the good ones about whom they were worried and whom they have vowed to destroy, as is now finally happening with Bill 14.

At first, the lawyers tried litigation against the early paralegal services, but they could not get the courts to agree that the services should not be allowed. After losing their cases at the appeals levels, they tried a different tack by constantly lamenting the fact that the paralegals were not yet regulated and by badmouthing them at every turn in public. Of course, the fact that we were not regulated for all of that time resulted from the law society's own backstage manoeuvring and fierce lobbying at all times to make sure that we were not regulated by the government, because this would have been much harder for them to undo.

So they first fought off regulation under Dr. Ianni's report, which was and is, by the way, a very fine report. It is the model that all responsible paralegals have always asked for. He advised the government of the day to have us regulated by the ministry now known as government services, with no lawyers involved. That is still the correct path to take if this government were interested in and concerned about the public interest, which you are not. This ministry has had a long record of service to the people by registering, licensing and regulating a number of different occupations and preserving them in the free marketplace at true market prices, while also providing complaint services and consumer protection measures for consumers. As Dr. Ianni pointed out, this is precisely the sort of regulation needed for paralegals. He said that then, and I say it still is.

If the lawyers were upset with Dr. Ianni, whom they had counted on as a fellow lawyer to turn the paralegals over to the law society to be put to death, they were utterly outraged 10 years later when Justice Cory also refused to hand us over. Judge Cory's report certainly showed signs of having been affected by active law society tampering behind the scenes, but still they could not get the one, and only one, thing which they sought: his recommendation that the services be turned over to the law society. Justice Cory also cited the conflict of interest and instead pointed to other kinds of regulations which would not have paralegals under the power of lawyers. Judge Cory too was concerned about the public, not the lawyers.

The Vice-Chair: Mr. Clancy, you have one minute.

Mr. Clancy: One minute. My goodness. Where shall we go?

I think the next paragraph is pertinent. If the law society were truly concerned about the public interest, and if they truly wanted real regulation of independent paralegals, they could have had it years ago with Dr. Ianni. But, of course, they prevented that because they did not want true regulation. They have never wanted true regulation, and they do not want it now, and they do not intend to have it. Mr. McGuinty's Liberals are handing these services over to them, not to be regulated, but to be destroyed.

I think my time is up.

The Vice-Chair: Thank you very much, Mr. Clancy.

CANADIAN CHILDREN'S RIGHTS COUNCIL

The Vice-Chair: I now call upon the Canadian Children's Rights Council: Mr. Wilson.

Mr. Grant Wilson: Good afternoon.

The Vice-Chair: You have 20 minutes to do your presentation. If you would introduce yourself for Hansard and then proceed, please.

Mr. Wilson: I'm Grant Wilson, president of the Canadian Children's Rights Council. My oral presentation will take about 10 minutes, leaving 10 minutes for questions and general discussion.

The Canadian Children's Rights Council is a non-profit, non-governmental organization which supports the human rights of Canadian children. We are one of the leading child human rights organizations in Canada, with volunteers from coast to coast to coast. Canadian children are those under 18 years of age, using the definition provided in the UN Convention on the Rights of the Child. Those under 18 comprise about 25% of the population, and, of course, those aren't voters.

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Our website, at www.canadiancrc.com, is one of the most visited children's rights websites in Canada concerned with Canadian children's rights and responsibilities. Typically, over 80,000 unique visitors per month from around the world read our website. Many of our website visitors are university or college students taking such courses as child and youth studies, child and youth law, early childhood education and care, social work, psychology and journalism.

Our website is an online resource providing analysis, our position and general information on Canadian children's rights issues for politicians, policy analysts and the public regarding the rights of Canadian children. Part of our educational archiving mandate is achieved by our use of hundreds of news articles from across Canada and around the world relevant to issues and laws impacting Canadian children's rights.

Some of the websites linking to us as a resource are those of such organizations as Health Canada, Library and Archives Canada, the University of Victoria International Institute for Child Rights and Development, Queen's University law school, University of Ottawa Virtual Human Rights Library, International Bureau for

Children's Rights, Divorce Magazine and CRIN, which is the Child Rights Information Network—a network comprised of over 1,400 child rights organizations from around the world. We have over 100 universities in North America that link into our website to get information on children's rights. In fact, over 1,000 major websites around the world link into ours as a resource. We have approximately 2,000 web pages.

Our website content covers all aspects of children's rights in Canada, including child poverty, child and youth justice, children's identity rights, children's general integrity, child protection, adoption, family law, parental alienation and much more.

Which brings us here today: In reviewing aspects of this bill before you, we are very concerned about family law and the effect this bill would have on anybody counselling, advising or parenting children who could be deemed to be a lawyer or practising law.

We see that about 90% of families cannot afford lawyers in family law situations. Many of these have been reflected in surveys presented here with regards to surveys done in courts. Of course, those don't consider those not in attendance at courts who are seeking family law assistance. Obviously, we have a monopoly in the legal industry here. We figure it's a conflict of interest for any MPP who has a law degree to vote on such a bill—lawyers running a monopoly who are voting on a situation affecting their future employment.

We see a number of areas which should be dealt with. Obviously, the justice policy committee has done nothing with family law since the special federal joint committee on custody and access in 1998, which has caused even more turmoil for families, and none of the implementations have happened here in Ontario. We still don't consider any kind of residency requirements in calculating financial child support, and there are no limits like they have in Germany on child support. There seems to be this big prize which causes all sorts of concern for parents and fighting in family law situations.

We do know of many paralegals and many family law lawyers who—quite frankly, the paralegals are providing an extremely important service to these people. Many of them operate on a pay-as-you-go basis for people who could never afford lawyers. They are operating at nights and on weekends to help people who are low income. They are helping them to complete forms, and although some of these paralegals don't go to court, they are helping to educate them. They are using entrepreneurial skills to provide education in group settings, running support groups so that people who are knowledgeable about this can help others gain knowledge so they are better consumers of legal services. We see a very strong need for these paralegals to continue.

We heard some testimony here yesterday with regard to why these people didn't form into a society or into groups and come here and speak, and it's because they're very afraid of this monopoly. That's what it comes down to. They're afraid of the results of this bill, they're afraid that this monopoly will be maintained, and they're afraid

that they're going to become targets if they put themselves on a list.

Some of the ridiculous things that we have seen in our own observation of hundreds of cases that we've attended in family law courts—this again is to do with the administration of justice—is that of audio tape recording or audio recording in the courts. We've addressed this with police departments, which come back with either trying to avoid putting anything in writing or skirting the issue. But in Toronto here, there are very large signs saying that you can't audio-record in this courthouse. Well, it's against the law to put up that sign and make that statement, because the media can go in there and do this, and if you're a party to your own proceedings, you can audio-record that.

When we brought this up with lawyers and said, "Well, what if your client wanted to come in and tape-record the hearing so that they could go and get a second opinion after the fact the next day, or go and discuss this with their relatives or their new partner, whatever the case may be, or just for the purpose of learning more about the system?" the lawyer says, "Oh, yes, that would be fine. They could come to court and tape-record it." If you ask the lawyer, "Well, why don't you just take the tape recorder with you and tape-record?" the lawyer says, "Oh, I won't do that." Well, paralegals would be willing to do that kind of a thing, and they even recommend it for their clients. Unfortunately, the Toronto Police Service is blocking people from doing this, and I have personally witnessed this myself.

I've also had situations that are just ridiculous in the courts. One of them has got to do with a case in St. Catharines, where I was an observer with other people from the Canadian Children's Rights Council at the criminal courts down there. Standing outside of the door, 20 feet from the door of a courtroom, where there were witnesses, people who were charged with crimes and a variety of other people, a woman who was irate with me because she heard what I was saying to a reporter who was there to cover this case came up and flashed my picture. I immediately turned to the police and said, "Under the Courts of Justice Act, nobody can take a picture in this courtroom. I feel threatened about this." The police talked to this woman, who had a criminal record and had been put in jail before for a violent act, and did not take the camera away from her, did nothing, did not charge her with anything. I filed a police complaint, and, of course, we have the police handling complaints for police.

We obviously see the Ontario government now taking action here to have somebody other than the police investigating their own actions, and this is the same kind of thing that I would like to see with regard to paralegals. Certainly, a society of paralegals should have a governing body which does analyze what they're doing and handles complaints, but this should be a public body, unlike that of the law society, where family law complaints are virtually ignored. It's a ridiculous circumstance. This is a higher standard than is acceptable to lawyers with their law society.

Basically, there are many people as well in schools, whether it's school counsellors, whether it's teacher, whether it's people educating children about the laws, who could be considered to be giving legal advice or all sorts of things, which is totally abhorrent to us.

Are there any questions regarding this?

The Chair: Thank you very much. We'll start with the official opposition. There are about seven minutes each.

Mr. Runciman: I note that we heard a similar submission earlier this week, and I really thank you for being here. I don't have any questions.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: No, thank you, Chair.

Mr. Wilson: I have a question here, because Ontario's got the worst record as far as provincial Legislative Assembly members responding to us. We seem to be able to pick up the phone and make a phone call to an Alberta MLA and get a phone call back and actually talk to them. Do the MPPs here even know what the UN Convention on the Rights of the Child is? A show of hands? Has anybody got a working knowledge of it? Nobody has a working knowledge of that? The Ontario government ratified that convention.

1430

The Chair: Mr. Kormos, do you have any questions?

Mr. Zimmer: He said no.

Mr. Wilson: He said no, he doesn't have any questions, and nobody else did.

Mr. Zimmer: And there are none over here.

The Chair: Thank you very much for appearing in front of the committee.

Mr. Wilson: Well, we haven't used up the 20 minutes yet, so I'd like to ask a few more questions myself.

The Chair: It's not a question-and-answer situation—

Mr. Wilson: Okay, then I would like to make a further speech if there are no questions or discussion to complete my time. I would like to inform you about what your obligations are to that 25% of the population with regard to this committee and this bill, because you are obligated to provide an analysis under the UN Convention on the Rights of the Child, which was ratified by the Ontario government on behalf of the people of Ontario. You are required to provide an analysis of this and the impact it will have on children, and children are defined as those under 18 years of age. You people are delinquent in providing such an analysis, and you're required to do so. In fact, I would challenge anybody here to even know when National Child Day is, which was a day declared by the federal government to review the rights of children in Ontario and the rest of Canada. It's November 20 of each year.

Mr. Zimmer: On a point of order, Mr. Chair: I understand the process is that a witness makes his statement and then there's time set aside for questions from the three parties. That question period's over, so we're done.

Mr. Wilson: Well, I was given 20 minutes, and other organizations were given 30 minutes.

The Chair: Thank you, Mr. Zimmer. Sir, you have 30 minutes. If you have any further statements, you can finish that and continue with speaking with what you have to say. Go ahead.

Mr. Wilson: We'll note Mr. Zimmer's comment on our website.

The Chair: Thank you very much.

Mr. Wilson: Can I speak?

The Chair: That's what I said. You can continue. You do have time.

Mr. Wilson: I thought you said I didn't have time.

The Chair: No, no. I said that you have the remainder of your time left. Go ahead.

Mr. Wilson: I was referring to article 42 of the convention, which refers to the responsibilities of every MPP here. I see this is of no concern to Mr. Zimmer, who has left.

Article 42 states, "Parties undertake to make the principles and provisions of the convention widely known, by appropriate and active means, to adults and children alike."

The government of Canada, to assist you, has designated November 20. I'd like to see the full page ads that are appearing in the Toronto Star and in other newspapers across this province and the TV ads talking about this. It is only through education of our children in support of their human rights, such as universal education and stopping child poverty, that we can truly realize the potential of this country.

Being an ancestor of the one of the fathers of Confederation and one of the first 12 non-aboriginal families that occupied York, which is now Toronto, I have a bit of a historic perspective on some of these issues and how important they are to aboriginal people, to all Canadians and the future of this country.

I think the politicians here should seriously take the time to read the convention, take the time to talk to their correspondence people so that we can have some kind of meaning dialogue on policies regarding these issues. As any class of eight-year-olds will tell you, you can end child poverty, you can stop family law cases, and you can have meaningful family laws which have a much more positive effect on children.

I believe paralegals are an important part of providing good-quality, low-cost services to those who need family law help. We're certainly in favour of ongoing training with paralegals who are dealing with the area of family law, but this isn't even a requirement for the law society members, who are lawyers. Any corporate lawyer in downtown Toronto who hasn't been to law school in 15 years can move up to Barrie and declare that they're a family law lawyer and practise family law. We have all sorts of people in small communities across this province who are generalist lawyers who really don't have any specific training or expertise in many areas of the law. But as general practitioners in a very small population area, they're the local lawyers, and the population just doesn't support specialists in that area, although there may be a market there for paralegal services for the 90%

of the people who couldn't afford the hourly rate of that lawyer.

One of the most fundamental principles of the UN Convention on the Rights of the Child is participation, even at hearings like this, of children and for their voice to be heard and considered, based on their maturity and a number of other factors. That input is not extended to children with regard to most hearings before any of the provincial committees.

I did take the opportunity of phoning Craig and Marc Kielburger of Free the Children—they're both on a book tour this week in the US—and I talked to a couple of other people who are out of province with regard to this. It would be very interesting to have more of these children appear before you politicians. You have a lot to learn from them, such as Hannah Taylor, who started the Ladybug Foundation. They have done more in some social justice causes than many other long-standing Canadian adults.

I'm finished. Thank you very much. I appreciate your time.

The Chair: You're welcome.

GLENN ROBERTSON

The Chair: Glenn Robertson is the next presenter. Good afternoon, Mr. Robertson. You have 20 minutes. You may begin your presentation.

Mr. Glenn Robertson: I would like to express my appreciation and thank each of you for the opportunity to sit before you, the appointed representatives for the government of Ontario, and offer my viewpoint concerning the ongoing debate of Bill 14, specifically schedule C, the area that addresses paralegal regulation. In addition, since the Law Society of Upper Canada has presented inappropriate and callous statements about the overall credibility of paralegals both to you and the media—and, therefore, the public—I feel obligated to address those as well.

I am a family mediator by profession and have been for 14 years. I trained in business management at Mount Saint Vincent University in Halifax, and I got a certificate in mediation and paralegal education from Dalhousie University Law School in 1997 and a certificate in specialized family mediation from the University of New Hampshire in 1999.

A related and growing area of work I do is as a divorce solutions consultant. Basically, I provide assistance to people suffering the effects and trauma of marriage breakdown and divorce. I find clients today are increasingly asking for services which would be termed that of a paralegal, so I work with lawyers practically as often as I work with people who choose not to have a lawyer, and some of them are really good guys. I have a very professional relationship with many lawyers in Nova Scotia. But many people tell me each day of the difficulties and frustration in dealing with lawyers and the high cost of trying to get a divorce. With hundreds of testimonials testifying to customer satisfaction, as well as

my involvement with assisting people by coaching them on court preparation and having personally represented clients in court, I offer you my comments and observations on this most important issue.

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Just a couple of quick quotes from three sample client testimonials: One would be from Anne. She's a federal government officer, and she says in part, "Having been to two lawyers, I can honestly say that paralegals are the best way to go. Just trying to get going with lawyers was frustrating and overwhelming, so I was kind of in limbo for well over a year, not knowing where to turn. Once we went to you, things started moving along immediately and we got through everything in a very reasonable period of time. We know if we were with a lawyer we could have ended up in court, costing thousands of dollars in legal fees. The cost for your service is very reasonable and I would highly recommend your services to anyone."

I have one from Darlene, who is a Pentecostal school teacher. She says in part, "My experience with a lawyer has left me with a sad and gloomy view of the justice system. We need more paralegals that can get to the root of a problem fast and inexpensively, and get results when people need them."

I have one here from a girl who is 17 years old. Her name is Amanda. We did a divorce arrangement for her mother and she sent us a card with this nice little picture, which makes me think, you know, that the topic of discussion today is for the families of Ontario, the low-income people, and the children, and the effects this will have on them. Amanda writes, "I want to thank you, personally, for all you have done for our family over the last year. I know things could be vastly different without you. Thank you, not only for your legal and professional help, but also for your friendship ... you both are very dear to me"—referring to people working in our company.

Many like me want to help these people, and the main reason I am here is because I truly believe the government of Ontario wants to help these many people too. For you to open your ears to someone from outside the province shows the serious concern that you have for this important matter. So I view this as both a privilege and a responsibility to voice some important, candid and truthful facts. I feel that any discussion of a bill such as Bill 14 is a national issue, as what happens in the larger provinces tends to overflow and be either helpful or damaging to the people in the smaller provinces. As a matter of fact, I feel that this matter is of such importance to the public that I flew here from Nova Scotia this morning. I've done this voluntarily at my own expense, as were two previous trips I made to Toronto regarding this serious and significant matter. In essence, this is important to me because I feel that, as it stands, schedule C of Bill 14 is fundamentally wrong, as it is not in the public's best interest. At the very minimum, I think it is past time for the public to have increased areas of practice by paralegals as well as self-regulation for the respected paralegal profession.

It was somewhat sad to hear the law society state they don't think paralegals are worthy of similar self-regulation that many other professions in Ontario enjoy today. We've all heard them say paralegals are uneducated, uninsured, untrustworthy and unregulated. Well, I don't know if they speak that way of the paralegals in their office, as being uneducated and untrustworthy. Certainly, the ones I know aren't. As for regulation, that's something that's been out of the hands of the paralegals for many years. That appears to be quite a naive comment for them to make. By my experience, I would have to question their comments stated to this committee. The law society puts forth an offensive image of paralegals.

There is one quote to support this view that the paralegals may be adopting about the lawyers. It's from United States Chief Justice Warren Burger. Referring to lawyers, he said, "Ours is a sick profession marked by incompetence, lack of training, misconduct and bad manners. Ineptness, bungling, malpractice, and bad ethics can be observed in courthouses all over this country every day.... These incompetents have a seeming unawareness of the fundamental" professional ethics.

Then the lawyers say that nobody is in authority, protecting the public from paralegals. In response to that, I submit that if the Auditor General were to do an investigation of the Law Society of Upper Canada and reveal the extent to which the Law Society of Upper Canada has drastically failed in regard to regulating lawyers' conduct and its drastic failure to live up to its mandate to govern the legal profession in the public interest, it would likely no longer remain self-regulated.

I would like to quote from information supplied by the Law Society of Upper Canada. In 2002, there were 6,051 new complaints filed against members of the Law Society of Upper Canada. A 20% increase in 2003 made for a total yearly number of 7,470 new complaints. Only 68 resulted in any discipline at all, leaving 7,402 disregarded.

I found that number quite shocking, so I placed a personal telephone call to the Law Society of Upper Canada and they confirmed that those figures sound accurate from their website.

History tells us, from figures available to us throughout the 1990s, that the rate of success for complainants going to the Law Society of Upper Canada is about 3%. I feel that lawyers have abused their privilege of self-regulation. So the number of complainants has greatly increased; lawyer behaviour isn't getting any better. The law society continues to protect lawyers at the expense of the client; that is, at the expense of the public. As a result, people are pursuing their own legal issues without full representation, in effect creating a consumer rebellion against the use of lawyers, which, I caution the committee here and the government of Ontario, will definitely grow under Bill 14 as it stands now.

Lawyers, their private legal organizations and the Attorney General have conspired together to seek restrictions of paralegal activities. Bill 14 is in fact the lawyers' reality of the advancement of a two-tier justice system in

Ontario, one where some people pay and receive services at a big price and one where lower-income people get no access at all.

Lawyers have priced themselves out of the divorce arena. Paralegals can greatly help in that regard and, as well, save the government a huge amount of money, free up court times, bring financial and health benefits to clients and make the community a much safer place to live by defusing the anger and sometimes violence that is involved when issues remain unresolved in divorce proceedings.

I heard a gentleman mention this morning about one lawyer's account and the summary of it and the high cost of it. It made me think of a case back in Nova Scotia, where I was involved in helping a gentleman trying to seek a divorce. He had been to a lawyer for over five years. They had a preliminary hearing, then they had a settlement conference, then they had a pretrial conference, then they had another settlement conference, then they had another pretrial conference and then they had a hearing to set a date for court, and the court date never came. But all those conferences were taking up the time of the judge and using up the public's resources, whereas if you have paralegals and people who cut to the meat of the matter, you can resolve these things quickly in the interests of everybody concerned.

We know that many independent experts, consultants, even judges and people from within the justice system, support expanded areas of practice for paralegals.

I think you are all very well aware of the relevant comments of Dr. Ron Ianni. He reported a high level of satisfaction among consumers of paralegal services. He also mentioned, "The law society should exercise no authority over independent paralegals in Ontario." I also feel this is vital for both consumers and paralegals and that this must be heard by the government.

The comments by a former Justice of the Supreme Court: The Honourable Justice Peter Cory stated that "it is of fundamental importance that paralegals be independent of both the Law Society of Upper Canada and the province of Ontario." He stated that it is his opinion that "the law society should not be in a position to direct the affairs of the paralegals." The governing body of paralegals must be able to function independently of the province of Ontario and the Law Society of Upper Canada.

Professor Frederick Zemans of Osgoode Hall Law School recommended the creation of an independent, self-governing legal services corporation, similar to Legal Aid Ontario, for paralegals. What a positive comment that was from a professor of a well-recognized law school. He also recommended expanded areas of practice.

The primary recommendation of Professor Zemans's report, which, notably, concurs with other independent reports, is that the law society is not the appropriate body to regulate paralegals. His report takes the position that the law society has a conflict of interest in regulating paralegals. This is contrary to the Attorney General's viewpoint, which was the origin of that very study.

We've heard about independent reports and the spirit of Bill 14, as it stands, and how it departs from these well-known and respected individuals.

1450

Back in 1997, when Ontario Judge Mr. George Adams left the bench to explore new ways to help people solve problems, it was seen as another indication of the growing dissatisfaction, even within the legal community, of the costs and delays associated with the traditional justice system. He said, "Most of the cases that go to court are settling too late, at too great a cost." He also said, "Many of these cases are settling because the people involved are running out of money, or out of patience, or out of anger and frustration."

It's interesting. On the Nova Scotia government Department of Justice website, it states that an increasing number of people don't want to retain lawyers for court representation and offers the following reasons, as we all have heard so much: the high financial cost, the consumers' movement and anti-lawyer sentiment. People are dissatisfied with lawyers, and this is increasing throughout Canada, as it is internationally.

One Nova Scotia lawyer who has actually started a paralegal office states, "We offer lower prices than lawyers are allowed to charge." It is very interesting to read the opening comments on his website, which read, "We have helped hundreds of Canadians avoid the stress of high legal bills which often accompany a divorce or preparing separation agreements." So he is actually doing and saying the same things that opponents to Bill 14 are saying, and he is in fact a lawyer. His website is howardmackinnon@sympatico.ca.

Under an explanation of cost for his services, he makes a comparison that "lawyers may charge up to several thousand dollars for this same service" that his office does for \$249. He mentions that these paralegals charge \$100 for preparing separation agreements. That sounds like something in the best interest of the public. So there is one lawyer who puts his opinion in writing.

Here are some very interesting comments from someone else who has put his viewpoint in writing. He is a level IV court officer in Nova Scotia. In his letter dated August 15, 2006, he states, "The majority of people arriving at the court do not wish to have, or feel they need to have, legal ... representation, opting to proceed as a layperson" instead. He states, "Paralegal services would accordingly fill a widening gap in providing valuable assistance in preparing applications and supporting documentation. [...] Private paralegal and mediation services that do exist in this area provide valuable and much-needed assistance to parties who wish to consider or proceed with this option ... Paralegal services have provided much-needed assistance to lay litigants in having their applications or concerns placed before a court with properly prepared documentation."

In closing, he says, "Resistance to paralegal services has been identified as coming from some members of the Nova Scotia Barristers' Society." He says, "Law firms have historically not been recognized as forerunners in

advanced long-term planning or business expansion.” It is his opinion that “such reaction is a ‘knee-jerk’ reaction which does not fully take into account the benefits paralegal services can directly provide to the legal community.” This letter is signed by Mr. Keith Mumford, justice officer, level IV, family court of Nova Scotia.

It’s quite an observation: Most resistance to paralegal services comes from the lawyers.

Independent experts, judges, the public and people within the system are generally recognizing that paralegals can play a useful access to justice role by providing assistance to individuals who, for various reasons, are unable or unwilling to hire a lawyer.

There should be two main objectives behind a bill such as Bill 14 so that people don’t muddy the waters: consumer protection and access to justice. None of these consultants or experts have ever said that paralegals should not be involved in these two areas or that there should be any concerns with them.

Our adversarial system is reasonably good at caring for judges and caring for lawyers, but the system fails when it comes to caring for the people actually going through divorce and when it comes to caring for the children of divorce.

In defence of paralegal regulation, I ask you to consider the comparison with midwives that I had submitted in my written presentation. It involves a decision of the Ontario government some 30 years ago that has had very good results. Since then, midwifery has evolved from being something illegal to practise in Ontario to standing as a tall, beneficial and effective model for health care. It took until 1993 for midwives to be regulated in Canada, when the Ontario Midwifery Act was passed.

Interestingly, prior attempts to pass legislation failed due to the opposition expressed by the Canadian Medical Association. It’s like in many parts of Canada today: Barrister societies are mainly the ones who oppose self-regulation of paralegals. It’s quite interesting to note that midwives in Ontario are expected to provide services to over 9,000 clients this year. What an outstanding contribution that profession has made to society.

As with midwives, there’s a huge demand for self-regulation for paralegals. The government of Ontario has in front of them a chance to do something really good for many people in Ontario and, ultimately, people in smaller provinces.

We’ve heard the analogies that this is kind of like Wal-Mart being in charge of Zellers or the Keg steakhouse being in charge of the Ponderosa family restaurant. I also thought about that on my airplane flight here this morning. There was a large majority of the people sitting in what I didn’t realize until afterwards was referred to as the economy class when there’s a very small percentage of the people sitting upfront. Those people were riding in first class. They wanted to pay extra money and have a few fringe benefits besides what the large majority of the population wanted.

Mr. Runciman: Federal politicians.

Mr. Robertson: Yes, I thought I recognized them.

I don’t think people should be forced to sit in first class. People should have the right to choose.

The Chair: You have about a minute left, so if you want to wind it down.

Mr. Robertson: I think the public is deserving of a choice. You’ve heard a lot of outstanding comments lately about this choice, and I think the decision the government of Ontario makes will have a far-reaching impact. If the government of Ontario really wants to do something right and good that would be long-lasting like the midwives, they should seriously take a look at the effects and the trauma that will be caused by Bill 14. Thank you very much.

The Chair: Thank you, sir, for coming all the way down from Nova Scotia to make your presentation. Thank you very much.

GUY BABINEAU

The Chair: The next presenter is Guy Babineau. Good afternoon, sir. You have 20 minutes to make your presentation, and you may begin.

Mr. Guy Babineau: Mr. Chairman, members of committee, it’s my pleasure to be here; it’s an honour. I’ll start in English rather than French.

Monsieur le Président et membres du comité, c’est un plaisir et un honneur pour moi de me présenter devant vous.

That will be the end of my French.

I’ve prepared a fairly extensive presentation, and what I would like is not to read from it but rather to talk about my experience over 40 years in court, which includes going to the Supreme Court of Canada on a few occasions, as well as the Supreme Court of Ontario, the Divisional Court of Ontario, the Court of Appeal and the New Brunswick Court of Appeal.

I appeared before the tax review board in 1972 requesting a proceeding in French, and the only person that had a hard time speaking French was myself because all my legal training has been done mostly in English. Just like I don’t talk about religion in English, I don’t speak legal in French.

One thing that’s important for me is the concept of the Constitution of Canada, which brought about a Constitution similar in principle to the Constitution in the United Kingdom. And it’s very important, because the Magna Carta says that “to no one shall we deny or sell justice.” What happens to the one that cannot afford justice? Is that not a form of denial? Is that not a form of sale? If you have a choice between what you can afford and what you can’t in the pursuit of justice, is the Ontario government going to deny the people that choice?

1500

Quite a few years ago, I brought a case before Divisional Court on a matter of urgency on the appointment of a former judge of the Supreme Court of Ontario, Mr. Morand. Because he had reached 65 years he had to resign. As a result, he was appointed temporary Ombudsman to fulfill the function of the Ombudsman, and he

couldn't fulfill the function of the Ombudsman because he was 65. How could you appoint somebody to fulfill a function that cannot be fulfilled because of the age factor? I went on a matter of urgency, and the Attorney General of Ontario decided there was no urgency. When the case went before the Divisional Court on a regular basis, he was no longer there. The Attorney General of Ontario then took the position that he is no longer Ombudsman; therefore, it is moot. I was denied my rights under the Constitution to establish whether he was entitled or not. I appealed that decision to the Court of Appeal on the basis that I was entitled to a decision, based on the Constitution and the Magna Carta, that we should not delay. The fact that they had delayed denied me a judgment. Now, funny enough, the judge who decided the case was moot commented in his ruling about how well prepared my documentation was, and I'm not a lawyer.

Therefore, when I come to the law society—the court was satisfied with my documentation and even mentioned during the hearing that I was better prepared than most of the lawyers—now I have to fight for the purpose of establishing whether I am competent in the area that I choose to practise. The problem that we have here is that some of the areas of practice are out of reach for paralegals; for instance, divorce. Even in uncontested divorce, there are court decisions that go against it. And they are still practising to some extent.

When I was working on a case recently, a group action case with the Ontario Rental Tribunal, the landlord was not satisfied. He decided to raise an appeal on a ruling. When it came to the filing, he couldn't file on us because we were paralegals. He had to go to the court on an *ex parte* motion so that he could file the application with the court in order to proceed, and then we would advise our client to seek proper representation, because at that point in time we were dealing with a slumlord and a lot of the tenants had skipped.

The other problem that I have as well with not being able, in one of my fields of involvement—it's with landlord and tenant. Now, if I have a bad decision, my client cannot afford a lawyer, and if there are grounds to appeal I cannot go to court and fight on behalf of my client. When I go and try to raise an issue with the Ombudsman, because I'm not a lawyer, the Ombudsman will not take my complaint. If I were a lawyer, he would take the complaint.

To me, that's a charter issue under subsection 15(1), "equality before the law." If the lawyer can't do it, go to the Ombudsman, and I can't, and I have a right to be before the Ontario Rental Housing Tribunal, that's the only course of action that I can take to raise my complaint. I cannot go to court, because the act forbids me. The Divisional Court will not even let me see the light unless I could make an appeal to go on special leave. But then I would have to file it and it would be depending on the mood of the person at the wicket. If the person decides, "Well, we don't think we like the colour of your hair, so you cannot raise the objection," where do I go from there? I cannot get past the wicket, therefore I

cannot go to the judge unless I call the judge's secretary and say, "Can I come into your office?"

To me, that testimonial—I have some concerns there. These concerns were expressed by a lot of people who appeared before you and also presented by some of the experts who were asked to prepare reports that at least paralegals should be allowed to take their appeals to the first level.

There were the cases I was working on. One case involved a superintendent. Under the labour code, superintendents are exempt from the hours of work. That means that the owner of the building can force a guy to be there 24 hours a day, seven days a week, and some landlords do it. I went in a case before the Ontario Rental Housing Tribunal, and clearly the Tenant Protection Act states that that act overrides any other act except for the Human Rights Code. But the problem there was that when I tried to bring an issue of enjoyment of the superintendent's apartment because he was overworked, the Ontario Rental Housing Tribunal overruled me on it. There are some documents from the labour board that said that that section of the act doesn't apply to the Ontario Rental Housing Tribunal. When I tried to raise that complaint with the Ombudsman of Ontario, he refused to address it. I had the minister of housing on another issue telling me to go to the Ombudsman. The Ombudsman already told me that I couldn't go there. So there are some real issues here with Bill 14.

I liked it when Bill 109 was before the House. I really enjoyed one of your friends, who did a beautiful performance on the Liberal Party, saying they were better in opposition than they were leading the province. Another guy I worked with was expelled, again on the NDP side, because he called one of the ministers a liar. Excuse my French; I might get thrown out of here too, but you have to call the shots the way they are, and if somebody doesn't tell the truth, what is it? Because of parliamentary conduct, he's not allowed to, but still, in my mind the truth is the truth, and if it's not truth, what is it?

The thing that is extremely important is that I'd like again to go back to my friends with the NDP when they brought about the health regulations that dealt with the midwives and all those things in 1991. It was a very comprehensive piece of legislation. It dealt with something like—I have it in my report and I haven't really counted them. Sometimes, depending on which way you count them, there are 16 and sometimes there are 21. Anyway, it's all the lines with the different colleges that look after each speciality. My point is, why can't we do that with paralegals? We talk about, "Paralegals might not be ready to be self-regulated," but why not form a college, the way it's done in the Health Professions Act and associated acts and establish a code of conduct and everything else? Eventually, if you want to go to self-regulation, then the door is open, but the program has already been set by the government.

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I think it would be fair because a lot of paralegals are very competent; a lot are caring. A lot of lawyers are caring as well; a lot of lawyers care about what they put

in their pockets. But I think that it's extremely important. I don't think, in all fairness, that the bill can go as it is. It's against the Constitution of Canada. It denies the people access to justice.

I had a person I'm aware of fighting a company before the Ontario Human Rights Commission. That person cannot afford a lawyer and tried to go to a legal aid clinic, but they're overburdened. Not only that; I found that in every case where I had a client before the Ontario Rental Housing Tribunal who faced eviction, I was always able to mediate so that if they kept on paying their rent, if they paid a portion over a 12-month period to bring their arrears in line, they could stay in their apartment. They had that second chance because I was there.

There are bad apples in the paralegal profession as well as there being bad lawyers. If you read my report—and some of you have the whole thing, where I refer to an application that I had made to the University of Moncton—I go into detail about my work in the French language and how that thing was miscarried. It took me 16 years to get the reference going before the Supreme Court of Canada. I even asked the Attorney General of Ontario at one point in time to submit a petition to establish the same thing. When I went to the Supreme Court of Canada the last time on leave to appeal, I wrote a notice of motion requesting dismissal of the case because the courts were illegally constituted.

Faced with that—the issue was already before the Supreme Court of Canada—the federal government couldn't take the chance that a judge would say, "The courts in Manitoba are illegally constituted because the act has only been enacted in French." They already had a court of appeal decision in Quebec stating exactly that fact: that if the act was only enacted in French, it's not valid because it's got to be enacted in both languages. Faced with that, the government had to bring in the Manitoba language reference because they couldn't take the chance of having to answer questions by a judge. If they read the questions, then the whole presentation could be a test case that wouldn't have a chance to be thrown out.

That's the point I was raising with many lawyers at one point in time, but they said, "The courts will never deny the fact that the courts are legally constituted. We can sit back, and eventually if we are forced to, we will do it. But until we're forced to, we won't do anything," and those are lawyers, my friends; those are government lawyers. That's the sad reality. There was a court decision in 1892 stating that the law was illegally *ultra vires*, and the Lieutenant Governor kept on proclaiming the acts in English only. To me, where is the sense of justice if the Attorney General, who represents the crown, does not make sure that the Constitution respects it? These members of Parliament are raising this issue. Those were not issues raised by a lawyer, my friends; they were by a paralegal. At that time, I didn't even call myself a paralegal; I called myself a reactionist. Thanks a lot.

The Chair: Thank you. We have about a little less than two minutes for each side. Mr. Kormos.

Mr. Kormos: Mr. Babineau, it has been a delight to hear from you again. You've got an amazing CV. You've worked for decades in the public sector, and have indeed made major contributions there. The documentation is here: This man has appeared in Divisional Court, and he sought leave to appeal to the Supreme Court of Canada. You've prepared some very capable and sophisticated legal arguments.

I don't know what your very earliest years were like, and I just tell you that you've kept some politicians and judges on their toes over the years. Back in 1980, it was my dear old friend Marion Bryden who presented your petition in the provincial Legislature; some folks here might remember Ms. Bryden from the Beaches. So you've kept politicians and, as I say, more than a few judges on their toes. You illustrate how effective people can be with some incredible native intelligence on your part, some very specific skills and some tenacity. So I thank you very much for your comments on this bill. As I say, it's a real pleasure to have you before the committee.

The Chair: Thank you, Mr. Kormos. From the government side?

Mrs. Van Bommel: I just want to say thank you as well. It was a very animated presentation, and I certainly appreciate your taking the time and preparing such an extensive document.

The Chair: Thank you, Mr. Babineau.

SEAN VOISIN

The Chair: The next presenter is Mr. Sean Voisin. Good afternoon, gentlemen, and if I can have you identify yourselves for Hansard. You have 20 minutes. You may begin.

Mr. Sean Voisin: My name is Sean Voisin.

Mr. George Carter: George Carter.

Mr. Voisin: I'm here today to speak to you in reference to schedule C of this bill and how it may affect paralegals.

I can appreciate the effort that you've put in extensively during this period of time to listen to a lot of people present a lot of different views, and I can appreciate the amount of effort that the government has gone forward with from different avenues to investigate the background in developing this bill and bringing it forward to Parliament. Your duty as our leaders in the law-making industry is clear. It's very vital that the law is defined for our society, and we appreciate the efforts that you've put forward.

We're concerned a little bit about this bill. I've been running an independent paralegal office since the summer of 1997. My practice specializes in the Ontario Rental Housing Tribunal as well as Small Claims Court. I've been involved in mentoring programs and the placement of students through Durham College in our office. I received an advanced certificate in mediation in 2004 through Durham College as well, and I sit on their

steering committee in reference to the court and tribunal agent placement program as well as the development of the educational components. So our concern is always how we can deliver competent individuals back into the marketplace who can serve the public with what the public is asking for.

Paralegals, I believe, are an important member of the legal team. I don't profess that they're the only element in that team, but I do think that they play a vital role in the legal process. The work that experienced paralegals have undertaken is quite often virtually undistinguishable from, or very similar to, the undertaking that a lawyer might present. Sometimes the paralegal is either presenting it as an independent paralegal or presenting it in the employment of that lawyer. Also, within commerce and industry, many organizations need employees who have the broad knowledge of law and procedures, together with the expertise applicable to their particular sectors, that paralegals do offer. They offer this in such vast areas as financial services, WSIB, the different varying tribunals.

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But I'm sure you've heard all of this. You've listened to different venues for the last week, and the week prior. I've got a long speech, but honestly, I think in many instances you've heard all of this. I don't know if I can deliver anything of more substance, other than the fact that there's a belief that, generally, paralegals desire regulation of some form, only for the benefit that it will raise the proficiency that would be delivered in the marketplace. From their standpoint, there's a great deal of concern as to how that regulation comes into effect and what it's actually regulating. Our view is that this bill does a wonderful job on outlining some of the regulation components. The fact that it misses the areas of practice where paralegals and our community are actually asking us to perform gives us some concern, that either we missed the opportunity to deliver all of that information to you or there wasn't enough information gathered when the bill was being generated.

I know the member was very diligent in his efforts to try to encompass a lot of elements from the community to gather that information and deliver it back in the bill itself. This isn't a bill that came about lightly. The fact is, though, that several governments have tried to present this bill at varying different stages—I'm sure Mr. Kormos is fully aware of that—but we haven't been able to deliver on that bill as of yet. We know that the bill is needed and we know that government is needed in this marketplace, but the right components aren't being delivered at the moment.

Our Attorney General has made a great effort to improve access to our legal system. He's given us the opportunity to get online forms or improve procedural conduct through small claims so that the public can gain access to the service themselves. Unfortunately, at times, though, our legal system seems to be somewhat overwhelming for our public to use. We try to make a good effort from the legal system, but it can be a little

complicated, and that's when the public tends to turn to a specialist, either a lawyer or a paralegal, who can assist them in that area of need.

If you look at the marketplace, the marketplace tends to be specialized, from a paralegal standpoint. A lawyer can graduate and basically open up shop in whatever field he wants. A paralegal tends to be focused on one area of practice to serve that client base specifically in that area. They tend to want to get the best out of that because that's where they can maximize their value back to the community.

I think the public has continued to demand the need for paralegals, or these legal service providers, as the bill tends to name them. And if they didn't demand it or desire it, paralegals would have vanished from the face of the earth some time ago.

I think by failing to define what a paralegal or a service provider is, we've not gained any assurance as to who will fit in as a paralegal after this bill is passed. It may be a very narrow field, that the law society decides that this scope can be only measured to allow a certain level of paralegals in, barring the rest who don't meet that criteria. Will that criteria be through a language impediment or a conveyance of language, or a speciality that may not be proficient enough, which might be wiped out from being served in the public and the public still asking for that service?

I think our duty, for one, was to look at how we could raise the proficiency level of paralegals to still service the public and have that assurance that we can do that. I think the government is looking at it, but, quite frankly, the bill itself doesn't say what level you have to be at. It says, "We're handing this power over to somebody else to determine that." I'm very concerned that the people whom we elect, whom we trust to help us in our time of need, are turning to another body to say, "You decide that for us," whether they are experts or not. Their input is important, but we rely on you to define what areas of law we should practise in, how much competency we should have, some securities towards our practice itself for the community, and this bill doesn't do that. It does some wonderful things, like tell us how we can regulate and remove people from the community that's providing this service, and it hands over the authority to someone else to tweak that service at a later point yet to be determined.

I went to the law society's own website just recently, and on their main page, dated April 11, they confirm that once this bill is passed, they basically have three elements that they're looking at:

- establishing the required competencies for paralegals, which they consider to be a necessary step for the development of the licensing and examination of paralegals in a specific area;

- developing a procedure to understand what grandfathering is. So they're going to look at paralegals who are in the marketplace right now servicing clients and determine whether they can stay in business, but that's going to be determined after this bill is passed. The government doesn't know what that constitutes;

—drafting bylaws that will exempt candidates who are either inside or outside of this bill.

Again, it's handing over the power to another party to make a determination on how this bill can be enforced, which is of concern, considering that you've put a lot of effort into developing this bill. To suddenly say, "Here, somebody else can define how this bill runs," I'm not sure that's what your intentions were. I'm sure it's for the best interests of the public that you say, "We want to ensure that paralegals deliver service, deliver good service, are held accountable for it"—and then open it up to the public to go about doing that—"and if they don't, let's see how we can make sure that the paralegals do meet that standard and then move on from it."

In reviewing the Hansards on this meeting and being at some of the presentations in the past—what the law society and even the treasurer of the law society has deemed fit for this bill has already been talked about. Clearly, the intention is that he's going to govern this bill on what the law is today. If the law says, "You can't practise in family law," that's what he's going to govern, and that's what you're allowing him to do. So if the community says, "We want people to help us with filling out forms in uncontested divorces or filling out forms in the Ontario Rental Housing Tribunal or filling out forms in small claims" or wherever they're asking for the assistance, he's going to follow the law specifically. "If you're allowed to assist somebody in filling out a form in the tribunal, that's great. As long as you're doing it properly and providing the service to the client, that's great. If the community is asking you for divorces or wills or registration of liens or transfer of land property, but the law says that you're not able to do that right now"—and he has clearly said he's going to come back and administer that. He's going to administer the law that's presented in front of him. He's not a bad man. He's just doing what is within his parameters.

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Whether our community itself is asking for that may be a different story altogether, which we see on a daily basis. We see clients coming through the door asking for specific services that they feel more comfortable dealing with a paralegal on, or they don't feel comfortable with the cost of a lawyer, or they don't feel comfortable with the communication that's going back and forth. But they are coming through the door understanding that that service could be provided through a paralegal and asking for that. To turn them away, whether you're able to assist them in the right format—this bill doesn't allow that to happen.

Coming back to what we're saying, there are basically two things we're looking at. One is the lack of defining the areas of practice in this legislation. If you took the legislation out and said, "This is what a paralegal can do"—just not have it as broadly scoped as a lawyer is, that being providing legal advice and administering to the law, but clearly defined that they are able to work in these areas of practice—then you have an act you can work with to outline the different components of edu-

cational requirements or commitment back to the community itself, and some assurances.

I don't think this bill is doing it right now. We would ask that you (1) look at removing this section of this bill, from the preceding on; (2) look at setting up a body that can set out the different areas of law and the different proficiencies, and manage that, be it a self-managed paralegal group, something similar to the OMVIC relationship, where they're self-governed; or TICO, where they're self-governed but their interests are (1) ensuring that the community has the value that's being provided to them, the assurances of that service being provided and (2) constantly improving or developing the participants in that community to be better paralegals or better participants and providers of service.

That is our presentation at this time. I'd like to thank you for listening to us. I'm sure, as I said earlier, that you have gone through a lot of this. I've tried not to be repetitious. I'd leave it at that at this time.

The Chair: Thank you. About a minute each. Mrs. Van Bommel.

Mrs. Van Bommel: Just a quick question. You're talking about scope of practice and that you want to have this entrenched in the legislation, but if we start to list the different kinds of practices, that doesn't give a lot of flexibility for the future in terms of things that could change. You may get programs in the colleges that open up for certain fields of practice that wouldn't be listed. How would we be able to deal with the scope of practice thing without cementing you into one kind of practice and never being able to expand or grow into new things?

Mr. Voisin: That's a very good question. If I understand it, you're saying that in creating a specific legislation you still want to have the ability to change it down the road.

Mrs. Van Bommel: You may, as paralegals, want to have the ability to change it.

Mr. Voisin: As you can see, the law tends to be fluid throughout time. It has developed itself, ongoing. Right now the Attorney General is involved with over 115 different acts that he's responsible for. He's created acts that were very specific towards, let's say, the commissioner's act. It defines a certain parameter as to how you qualify for that and what is entailed in it, but he's amended that as he's gone along.

The other portion is the management itself. All we're asking for is that you define the areas of—

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you very much, sir. Again, an important contribution from somebody who delivers these types of services out there in our communities.

Is Mr. Robertson still here? He used the analogy between first class and second class on the airplane. I understand what he was trying to say. One's far less expensive than the other. I'm not being critical, but I really don't think it's fair to talk about paralegals—not that he was; he was trying to illustrate that one was less expensive.

Paralegals are not second-class lawyers, in my view. Paralegals are professionals with a particular type of

service to provide, quite frankly—the WSIB, Small Claims Court, highway traffic court—wherein they, more often than not, have more expertise and experience than most lawyers do simply because of the nature of the beast. That's why I agree with you that it's our job, as a Legislature, to talk about scope of practice. We may not want to get into the minutiae of exactly which educational programs would be appropriate or not, because that can be done by regulation, among other things. But I think it's incumbent upon us to talk about what it is that, in a regulated paralegal world, we're going to let paralegals do versus what we let lawyers do. I think it's an entirely fair and reasonable proposition. So thank you very much.

The Chair: Thank you, gentlemen, for your presentation this afternoon.

I believe we're setting up a teleconference?

Mr. Kormos: Chair, if I may. Again, I'm advised that the teleconference may not be ready to go—

The Chair: That's been postponed. Okay.

Mr. Kormos: —and that Mr. Odoardo Di Santo, whom I know well and love dearly, isn't here yet. In view of that, I'm wondering—yesterday and today Sheila McKenna's been patiently observing this committee and she's desperately eager to have perhaps 10 minutes to make submissions. I'm seeking unanimous consent—she's here in the front row—that she be given that 10 minutes.

The Chair: Do we have unanimous consent? We do. You may come up.

Mr. Kormos: Thank you, colleagues.

SHEILA McKENNA

The Chair: Good afternoon.

Ms. Sheila McKenna: Good Afternoon. I'm Sheila McKenna, a resident of Ontario. I didn't realize until this bill was well advanced that you were going to be dealing with issues that touch on experiences that I've had and observations I've been working on, so I'm afraid that my thoughts are not very well prepared. I want to draw attention to something which has been alluded to, but I want to zero in on it a little bit more closely, and I hope that's useful for you.

To give you an idea of how I came to be interested in these issues, I made the mistake, seemingly, of marrying the wrong person.

Mr. Kormos: Well, it's good you can laugh about it now.

Ms. McKenna: I hasten to say wrong husband, right daughter. Actually, when my daughter went to Oxford to take up her full scholarship, I brought back a copy of the Magna Carta with the same words that were quoted this afternoon, "To none shall we sell, to none deny justice," which is so apt for what you're considering this afternoon.

Such were the disasters of my divorce that my ex-husband suffered a heart attack after we were long separated. At that time, he suffered brain damage and he

came under public guardianship. To put it in a nutshell, I spent 10 years or so getting divorced from a department of the Attorney General's office, and I know much more about the dysfunction of the legal system in Ontario than I ever wanted to know.

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It's my understanding that part of Bill 14 would extend supervision of legal services beyond lawyers to paralegals, and while I haven't had any experience of paralegals myself, I think somebody has to bring to your attention what you must already know—if you don't, it's through wilful ignorance—and that is that the law society does not operate currently such that it can place the public interest routinely ahead of that of its members. I believe that is manifest and demonstrable.

If you care to look at the procedures, and lack of them, laid out by the law society to those who need their good offices to defend them against abusive or fraudulent or otherwise misbehaving lawyers, you'll find that they have not set themselves up such that it is likely that they would protect the interests of ordinary Ontarians above the sometimes improper interests of its members. So before you give any consideration to extending the scope of their supervision, I believe that in order to improve the likelihood and equity of access to justice in the province, you must start by requiring the law society to operate in a manner which makes it likely that it will honour its mandate. You need to exercise some oversight over its manner of operation.

Just to bring this alive for you, I'll give you an example of how things may well go for people who need to complain.

The likelihood is, if you're in this situation, you're already involved in matters where there's retaliation, where when you try to assert your rights or you try to get what you need, you're already experiencing the other side coming at you and making life hard for you. I had officials of the Attorney General's office doing things that I think would make your hair stand on end: calling me down for non-existent court proceedings, failing to make payments that they were able to make from their client's funds and that they were obliged to make by a court order, withholding needed funds, generally conducting themselves in a way that conveyed to me that they felt they could make my life hell unless I would sign on to something that would give the appearance that I was in agreement with what they wanted the outcome to be.

When you find yourself in that situation, you say to yourself, "Well, how can lawyers be conducting themselves like this in public in Ontario in 2006?" So you approach the law society and you want to know, "What am I letting myself in for here? I'm already seeing government lawyers misbehaving, so I need to assure myself of the professionalism of the person who may be looking at my complaint." If you ask at that point, "What are your procedures? What will be happening? Who will deal with my complaint? What kind of investigation could I expect? When will I have an answer?" the gist of what

you'll hear from the law society could reasonably be described as, "Don't worry your pretty little head about that. Just put it in writing and wait."

You have no way of knowing at what point the person against whom you're placing a complaint will be given the information that you're complaining. You have no way of managing the kind of retaliation that may come back at you. The general sense that you're given is that you have to go into it blindfolded. You have no dignity. You have no resources to support you. You're not given any confidence that there is a professional procedure which is going to look fairly at what you need to complain about.

So I want to suggest to you that it is a matter of urgency to require the law society to change its manner of operation to make it likely that they honour their mandate and that that is an absolutely necessary first step before you give any consideration to extending the scope of their jurisdiction. And if you don't know what I've just told you, go take a look. Try it out and see. Ask them, "What are your procedures? What can complainants expect?" Don't be fooled by assurances: "We do it right. We're the law society. Everything is hunky-dory." You've heard enough at these hearings to know that for many Ontarians, everything is not hunky-dory in the legal system.

Thank you for your work on this. Good luck with doing the right thing. I'm sure that's why everyone voted for you. Give it a try. We need you to do it.

The Chair: Thank you very much.

We're just trying to get the 4 o'clock presenter on the line for the teleconference, so we'll recess for about 10 minutes. Thank you.

The committee recessed from 1548 to 1600.

MARTIN, COIN AND ASSOCIATES INC.

The Chair: The committee is called back to order. Our next presentation is via teleconference. It's from Martin, Coin and Associates, and I believe we have Mr. Al Martin on the line.

Mr. Al Martin: That is correct. Good afternoon.

The Chair: Good afternoon, sir. Welcome to the committee. If you can just spell your name for Hansard; you have 30 minutes and you can begin any time.

Mr. Martin: My name is Al Martin. Surname M-a-r-t-i-n; first name Al. I am the CEO of Martin, Coin and Associates Inc., a legal corporation founded by myself and Tim Coin. Keeping in mind that we were dedicated to one common goal, that goal being to provide the most comprehensive and cost-effective legal support solution through years of research and consultation with lawyers, judges, adjudicators, crown prosecutors and paralegals inside and outside of Ontario, we developed a paralegal platform with three premier services, consisting of delinquency management services, which includes communicating with debtors and negotiating settlements of delinquent accounts or debts and, where necessary, representation in the Superior Court of Justice, Small Claims

Court; landlord and tenant services, representing landlords and tenants at the Ontario Rental Housing Tribunal with respect to the Tenant Protection Act and; lastly, representing motor vehicle drivers who have been charged under the Provincial Offences Act, Highway Traffic Act and Compulsory Automobile Insurance Act.

My presentation will consist of three critical questions and answers, and before I go into those three items, can everybody hear me okay?

The Chair: We can hear you just fine.

Mr. Martin: Thank you.

(1) Do paralegals agree that the industry should be regulated?

2) Is it a conflict of interest for the Law Society of Upper Canada to regulate paralegals, considering the past attempts to disqualify and discredit the industry years ago?

(3) What could result if we add to the paralegal cost equation variables such as high fees for licensing and unaffordable errors and omissions insurance?

I'll start with my first question: Do paralegals agree that the industry should be regulated? Legitimate paralegals have always been pro-regulation as no paralegal enjoys the notion that the government doesn't care to regulate, draw boundaries or provide a code of ethics or a code of conduct for the profession that you are in. Frankly, ask any paralegal how many times they have been asked or had to explain what a paralegal is or the difference between a lawyer and a paralegal. It's cumulatively tiresome. How about working in a profession where you're not recognized by a majority of the general public as a profession, or having to hear the horror stories about another fly-by-night paralegal and having to pull out your broom and mop to clean up the mess?

How about trying to market to that potential a huge new corporate client and, in the back of your mind, believing that you can influence public opinion by working hard and achieving results, only to find that they've never heard of and do not use paralegals? You can provide an explanation, only to receive a reply in return that said company does not want to have anything to do with an unregulated profession, or the wild, wild west, if you will. There was one publicly traded corporation client of ours—a telco—who decided they were ready and willing to venture into new paralegal terrain. They used our delinquency management service and continue to use it today. It was a gamble, but a gamble that paid off dramatically and continues to pay off for them today. Our client's policy was in the past, and is also presently today, that they would collect all data and statistics and publish them on a monthly basis, showing a percentage of recovery results. Before we came on board, the highest percentage of recovery was 7%. Within six months, we came in at just over 26%, and within another 12 months we were at 36%—once again, the highest result in the past being 7%.

This was our precedent-setting case, and although we obtained many referrals because of these results, many of the referrals refused to bring us on board because we were an unregulated profession.

The bottom line is that all legitimate paralegals welcome regulation for various reasons. To all paralegals, I ask you this: What are your reasons? To the standing committee, all you need to know is one thing: Paralegal regulation is definitely a step in the right direction.

Second question: Is it a conflict of interest for the Law Society of Upper Canada to regulate paralegals, considering the past attempts to disqualify and discredit the industry years ago? Is this a case of the fox guarding the henhouse, or, to quote LSUC bencher Robert Topp, "Is it like a corporation that's making widgets and is now going into the commercial airline business? The board of directors may want to do that, but the shareholders might want to have something to say about it." I believe the analogy, as hard as it may be to swallow, is applicable, and it's for that reason that almost all paralegals are not in favour of regulation by the law society.

There have been many questions: "Well, then, who is? Who's in the best position to make critical decisions on the various issues?" I would respectfully submit, who better than the paralegals themselves, the paralegals who fight on the front lines in various courts across the province every day? The law society has been quite outspoken on their views about paralegals, and the views have not been the positive viewpoints in the past. I suppose the law society proposes to bury the hatchet and now regulate the profession? I believe the law society has found itself in a conflict of interest. Regardless of the notion that paralegals would have a prominent role in the governance of the law society and over regulation of the paralegals, it does not erase the history of the past.

My third question is: What could result if we add to the paralegal cost equation variables such as fees for licensing and unaffordable E and O insurance? The paralegal industry grew exponentially in Ontario due to one basic premise: the premise of affordable legal services. Allowing the law society to regulate paralegals could jeopardize this option to the public, as the law society's proposed regulations are certain to include new licensing fees and costly E and O insurance. This will inevitably result in paralegals having to increase hourly rates in order to compensate for the added expense, thereby narrowing the cost differential between lawyers and paralegals. It seems clear that the end result of this new legislation, Bill 14, could ultimately be the elimination of the paralegal cost advantages.

I ask you to suppose that in column A we have a lawyer, a member of the Ontario bar, and in column B, we have an Ontario paralegal. It would be my honourable submission that the addition of licensing fees and E and O insurance rates, as dictated by the Law Society of Upper Canada, could minimize that cost differential. So you have a new client. You have a member of the Ontario bar in column A and an Ontario paralegal in column B. Suddenly, it's not so enticing to use a paralegal anymore. Quite personally, if I was the client and I was looking at column A and column B and there was only a cost differential of about \$10 or \$15 per hour, I believe, myself, being a paralegal, that I would choose

the lawyer. I would choose the lawyer because the lawyer went to law school.

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Along with many others in Ontario, we have provided exceptional legal services at a reduced rate in comparison to lawyers for many years. This, in our view, is a humane approach to basic legal services in Ontario. It has been our main focus since day one to provide cost-effective and professional legal support services. The reality is that many of our clients are lay persons with limited income who may otherwise not have been able or are not able today to afford the cost of a lawyer.

In closing, allowing the law society, a competitor, to regulate the paralegal industry could in the end result in a large population not being able to afford or utilize our justice system. The public interest must be taken into account. Access to Justice Act: Is it all in the name, or is it really going to provide access to justice? Thank you for listening.

The Chair: Thank you, Mr. Martin. We have about seven minutes of questions or comments from each side. We'll begin with Mr. Runciman.

Mr. Runciman: Thanks, Mr. Martin. It was an excellent presentation. I think you wrapped up your concerns and suggestions very succinctly, and I appreciate it.

I'm wondering about the errors and omissions insurance question. Do you have that kind of coverage now to some degree?

Mr. Martin: Yes, we do. We're currently with Encon.

Mr. Runciman: I know that that was raised earlier when we were talking about what they called the PPA, I believe it was, which collapsed, and which was going to be the vehicle to head towards self-regulation. Apparently, one of the significant causes of the failure of that was the reluctance of paralegals to take on errors and omissions insurance. At least, that was the testimony that we heard. But I guess in your case, that is not the case.

Mr. Martin: Absolutely not. We take the position that any responsible paralegal will carry errors and omissions insurance and that it is a necessity. I don't think it would be a really big problem for a paralegal regulatory society or body if it was a requirement and an offence not to carry errors and omissions insurance.

Mr. Runciman: I appreciate what you're saying with respect to the law society being the regulator and the concerns you and so many others in your profession have, and certainly we've heard that day in and day out from a range of people. Having been around this place as long as I have, I am very doubtful that the government is going to back away from this initiative in terms of the law society, despite some of the comments Mr. McMeekin of the Liberal Party was making. I think the only way that might happen is if the backbenchers in the Liberal caucus, and certainly the members of this committee, rebelled, and given the history around this place, I think that's an extremely remote possibility. With what we're hearing from the Liberal members of this committee, I wouldn't hold out much hope that they're going to back away from the law society as the regulator.

What some members have contributed to this process is, "Well, if we have to accept that as a reality, here are ways we can improve upon that situation." We've talked about ways in terms of the professions that are already regulated being eliminated through amendment to the act, and in terms of the scope of practice, that perhaps that could be left in the hands of the Attorney General, the justice committee or the Legislature. Do you have any reaction to those kinds of initiatives that perhaps could allay some of the concerns that members of your profession have?

Mr. Martin: I know specifically what you're talking about. Please correct me if I'm wrong, but I believe you're referring to a specialization in certain areas of practice and (2) qualification for scopes of services.

Mr. Runciman: Well, actually, spelling out or regulating and defining, if you will, will not be left in the hands of the law society. They could be the regulator, but the defining body, if you will, of who is or isn't a paralegal would be left in the hands of the government.

Mr. Martin: I understand. Actually, if I could just ask a question: Was it Justice Peter Cory who proposed, I think in May 2000, that paralegals should be licensed, but they should be a self-governing body?

Mr. Runciman: That's right. The other option that's been suggested in this committee is that, rather than the law society, the Ministry of Government Services be the regulator for a period of time while the industry itself prepared for self-regulation. But again, hearing what we're hearing from the Liberal members of the committee, I'm not optimistic they're going to consider that as a possibility.

Mr. Martin: Well, in any case, if for nothing else, it feels good to be heard.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you, Mr. Martin. The Ontario Bar Association, the law society, Osgoode professional development and at least one private firm that I'm aware of operate ongoing, continuing education programs focused primarily on lawyers and people working in law firms, and there are, by the time the year is done, probably several a month available. Whether or not lawyers attend them is up to that lawyer. Where and when and from whom are there similar ongoing educational programs for people in your profession?

Mr. Martin: That's a really good question. I would only reply by saying this: At the inception of the lawyers' profession, those were things that had to be developed and nurtured, and the same would have to be in the paralegal profession. It would be up to the regulatory body, through the charging of fees, to facilitate that type of educational process for paralegals, just as it's provided for legal people. Paralegals of the future would be the ones that would be responsible for putting those programs together.

Mr. Kormos: Sure. I don't want to be unfair, nor am I being critical, but my impression is that there aren't a whole lot of these courses available. If there are, I wish I knew where they were, because I'd be sending my

constituency office staff to some of them. So is it a fair observation that there aren't a whole lot of these courses currently available for people in your profession?

Mr. Martin: That's a fair thing to say. I may be getting myself into a little bit of trouble here, but to be quite frank—

Mr. Kormos: We're in good company.

Mr. Martin: —I'm tired of having to sneak into these lawyers' conferences in order to update my skills and obtain this sort of information.

Mr. Kormos: What do you mean "sneak in"?

Laughter.

Mr. Kormos: I'm serious.

Mr. Martin: I have a lot of friends in the legal profession, a lot of lawyers, and if you approach them and tell them right from the outset, "Look, I'm not lawyer, but I take a lot of interest in the presentation that you're going to be making at the courthouse on this date," oftentimes, if you pay the fees, they'll allow you in.

Mr. Kormos: If you were a person with some input into a regulatory body, would you require a minimum number of hours per year of this type of continuing education for members of the paralegal profession, acknowledging that lawyers do not have a minimum number of hours per year?

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Mr. Martin: You know what? It's always been my personal mandate to get as much—not necessarily even training but to update yourself on amendments to laws and that sort of thing.

Mr. Kormos: Exactly.

Mr. Martin: It's always been my personal mandate to do that. In response to your question, I would say if a paralegal is not pursuing that on an ongoing basis, then they should really think twice about why they're in the profession in the first place.

Mr. Kormos: I appreciate that paralegals who have come forward, almost to the final one, have talked about being in the profession because they want to provide assistance in advocacy at a more affordable rate than lawyers, but at the end of the day you have to make money. If you're not making an income—or if you're independently wealthy like members of the Canadian Senate—you can't keep on doing it. What do you expect would be a fair annual fee for a paralegal to make, knowing what your annual revenue is, what your income is and knowing that lawyers pay—how much do they pay, Mr. Zimmer?

Mr. Zimmer: Fees or insurance?

Mr. Kormos: Fees, for a start.

Mr. Zimmer: About \$1,700.

Mr. Kormos: Lawyers pay 1,700 bucks a year, give or take, according to Mr. Zimmer. Again, what should a paralegal fairly pay for a regulatory annual fee?

Mr. Martin: I guess that would depend on what they're getting.

Mr. Kormos: Lawyers would say the same thing about their \$1,700, I suppose.

Mr. Martin: I don't know if I can give you a precise monetary figure without knowing what a paralegal would get for that \$1,700. For example, if they were getting those updates and training sessions, like lawyers get, then obviously there would have to be a cost factored into what their annual fees would be. I guess to answer your question, it's my guess that lawyers pay about \$8,000 in fees to the law society, and that doesn't include everything. So I would say—

Mr. Kormos: Those are the guys who have had a lot of claims on their errors and omissions. Right, Mr. Zimmer?

Mr. Zimmer: Yes.

Mr. Martin: I'm just taking a guess. Is that somewhere in the neighbourhood of the total fees for a lawyer?

Mr. Kormos: Seventeen hundred, and errors and omissions insurance is another—

Mr. Zimmer: Fees, and errors and omissions insurance for a claims-free lawyer are about \$5,000.

Mr. Kormos: Okay.

Mr. Zimmer: And it goes up—

Mr. Kormos: Right. So a lawyer whose record is basically clean in terms of claims, it's \$5,000 a year total.

The Chair: Thank you.

Mr. Kormos: Interesting.

Mr. Martin: Five thousand total. Okay. I would say something in the neighbourhood of about \$2,000 to \$2,500, provided that was enough—let's say, for example, it was a self-regulated profession. If \$2,500 a year per paralegal was enough in order for them to be updated on the law, have training sessions and have access to updated legal information much the way lawyers do, I would say that—

The Chair: Thank you.

Mr. Kormos: We've got lots of time, Chair.

Mr. Martin: I would say that that's fair. But as I told you, Mr. Kormos, we would have to—

The Chair: Thank you, Mr. Martin. Government side? Mrs. Van Bommel.

Mrs. Van Bommel: Thank you, Mr. Martin. We've heard a lot of different presentations over the last few days from all sides of the argument and a lot of good ideas coming forward from paralegals about how they should be regulated. But one of the things that concerns me is that in spite of all these great ideas of how to do this stuff, nothing has happened up to this point, and I'm wondering why that is. Why does it seem to take this kind of thing to make everybody start talking about regulation and self-regulation when there's been the Ianni report and the Cory report and, I would say, ample opportunity for the profession to start organizing itself and preparing itself for self-regulation?

Mr. Martin: I would reply by responding first of all that I believe there have been steps forward, but I believe the reason why we have everybody coming forward now is because we legitimately see the law society regulating our profession as potentially killing the industry; and for anyone, no matter what the priorities are in your day, you

see that as a very, very serious threat. So that's to answer your portion of the question dealing with why everybody is coming forward.

I would agree with you that there are a lot of really great ideas that are coming forward. Maybe that's what it takes. Maybe it requires a threat of possibly killing the industry for us to come forward and provide a platform that's acceptable to the Ontario government in terms of regulating paralegals.

The Chair: Thank you very much, Mr. Martin, for taking the time to speak to the committee.

Mr. Martin: Thank you very much for allowing me. Have a good day, everyone.

CANADIAN SOCIETY OF IMMIGRATION CONSULTANTS

The Chair: The next presentation is from the Canadian Society of Immigration Consultants—Mr. Ross Eastley and John Ryan, chair.

Mr. Kormos: Are these dissidents, or are they mainstream CSIC people?

Mr. John Ryan: I can assure you, Mr. Kormos, we're mainstream.

Mr. Kormos: Not that there's anything wrong with dissidents.

Mr. Ryan: It goes against my grain—maybe when I was a unionist at one time.

Mr. Kormos: There you go.

The Chair: Good afternoon, gentlemen. You have 30 minutes. You may start your presentation.

Mr. Ryan: I'd just like to start out by thanking the committee for allowing us to appear and to give you some comments on what we believe is an admirable initiative: the Legislature considering Bill 14, the Access to Justice Act.

My name is John Ryan. I'm the chairperson of the Canadian Society of Immigration Consultants. Seated to my left is Mr. Ross Eastley, who is the chief executive officer and registrar of the Canadian Society of Immigration Consultants.

A little about my background: I'm an ex-immigration officer. I have been a national president and vice-president of immigration consultant advocacy groups for the better part of eight or nine years, prior to the Mangat BC law society case at the Supreme Court. I was a director on the Canadian College of Immigration Practitioners, which was the first body to sign a memorandum of understanding with the Department of Citizenship and Immigration Canada to develop a two-track system toward self-regulation of the immigration consulting industry in Canada. I was also one of the key individuals who led the intervention at the Supreme Court of Canada on behalf of the Association of Immigration Counsel of Canada in the BC law society versus Mangat. I was also honoured to be a member of the minister's advisory committee on the regulation of immigration consultants, which presented a report to the minister that was adopted by the federal government and now serves as the base

paper for what exists in the Canadian Society of Immigration Consultants today.

Our remarks today are largely going to be directed toward the sections of the Access to Justice Act that pertain to the regulation of paralegals within the provincial jurisdiction of Ontario.

We are supportive of the initiative of the province of Ontario to regulate paralegals. We believe in the interests of the consumer. It's an important initiative which places the interests of the consumer above that of the practitioner, which is one of our primary fiduciary responsibilities: to hold their interests before our own.

We believe that the Law Society of Upper Canada can be an effective regulator. We certainly share many concerns with the law society about the protection of the consumer, as the designated professional body tasked with overseeing the regulation of consultants at the national level.

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Just as a little background, the Canadian Society of Immigration Consultants is a federal non-profit corporation whose members are recognized as authorized representatives under the Immigration and Refugee Protection Act. Authorized representatives are those individuals who the federal government will deal with who charge a fee to represent, advise or consult persons subject to an immigration proceeding.

Since April 2004, under the Immigration and Refugee Protection Act, only authorized representatives—authorized representatives are defined as members of the bar, one of the provincial and territorial bars, as lawyers; Quebec notaries, members of the *Chambre de notaires du Québec*; and members of the Canadian Society of Immigration Consultants—are recognized and allowed to appear as paid representatives in front of the government of Canada in immigration proceedings. This also extends to the Immigration and Refugee Board and proceedings that happen with the Canadian Border Services Agency.

The federal government's jurisdiction to determine who may appear as representatives before immigration boards and tribunals or officers was affirmed in the Supreme Court of Canada decision, a unanimous decision, the *Law Society of British Columbia v. Mangat* in 2001. This decision came after a royal commission and two separate standing committee reports which recommended the regulation of immigration consultants. It was always a question, though, as to whether the regulation of immigration consultants was a federal or provincial jurisdiction. The Supreme Court decision in the *Law Society of British Columbia v. Mangat* cleared that issue up and clearly established that, should the provinces fail to occupy the space, the federal government had an obligation to do so, and the federal government has done so in April 2004 with the introduction of the immigration and refugee protection regulations.

For over two years, our CSIC members have been recognized by the federal government as persons who, for a fee, are authorized to act in immigration matters. CSIC has established an extensive system of self-

regulation for qualified immigration consultants, which includes requirements for membership, an effective complaints and discipline process—although I'm sure I'll get some questions on that later—mandatory errors and omissions insurance, mandatory continuing professional development courses for its members, and a code of professional conduct.

You will find in your appendices, in appendix 4, a detailed CSIC rules of professional conduct. You will also find in appendix 5 the discipline council rules for our hearings directorate for the hearings of discipline complaints against our members.

Given the fact that immigration is a federal undertaking, as it deals with foreign nationals seeking immigration to Canada, and CSIC members are recognized by the federal government as authorized representatives, CSIC submits that its members are already regulated by the federal government. Should the province of Ontario seek to include immigration consultants within the ambit of the Access to Justice Act, we suggest that CSIC members should be exempt from being regulated by the Law Society of Upper Canada. The support of this existing system by the province of Ontario will avoid creating unnecessary and confusing levels of duplication in services and provide for the most effective consumer protection for those availing themselves of services of non-lawyer immigration representatives. Quite frankly, it will remove confusion from the consumer as to who the proper regulator of the profession is.

Other provincial governments currently do not regulate immigration consultants. They have recognized CSIC members—just off the top of my head, British Columbia and Manitoba jump to mind—in regards to their own respective provincial immigration programs, although that's been a policy choice by the provinces themselves. CSIC respectfully recommends to the committee that the committee consider and follow two of the options if it feels that it needs to examine whether or not to include immigration consultants in the scope of practice of Bill 14.

As I've already said, CSIC believes that we are already regulated at the federal level. However, we recommend that, should you choose to amend Bill 14 to explicitly exempt full members of the Canadian Society of Immigration Consultants and other groups, which, in the public interest, should be exempted from the legislation—just off the top of my head, I'm thinking about union reps, about people who would be involved in appeals, non-government agencies that would possibly be working in the interest of the public for no fee. This is one of the areas that we examined extensively on the minister's advisory committee.

Alternatively, if you do not choose at a legislative level to create classes of exemption, we suggest that you amend Bill 14 to explicitly state or instruct the Law Society of Upper Canada to be able to exempt, on a class-wide basis, members of the Canadian Society of Immigration Consultants and other groups that are effectively regulated or, in the public interest, you deem it necessary to do so.

In closing my official remarks, I'd like to say that when we get together to address the interests of the consumer and we try to create legislation or a system that will design a system that will protect the consumer, we all have to realize that we can do the best job we can but we're not going to create a perfect system. There will always be individuals who will try to circumvent or frustrate the good intentions of the system. With any regulatory system or professional body that governs the profession, it's an incremental process that happens over time. Certainly, that's been our experience to date with the Canadian Society of Immigration Consultants, and I think it will be the experience of the Law Society of Upper Canada once it starts to examine questions such as scope of practice, what standards they should put in to transit people who are in an unregulated space to a regulated space. Will they consider grandfathering? Will they consider language abilities? Will they consider testing criteria before people will be allowed to practice? Inevitably, there are some very serious choices that have to be made.

I will tell you, given the years of involvement I've had on the issue, the federal government and the various parties that have looked at this, from the Supreme Court to the royal commission to the standing committee, have given a lot of thought specifically in the area of immigration consultants and immigration law. It's not a simplistic solution that can be thrown at it. As you peel layers back from the problem, you start seeing nuances that you have to adapt to as a regulator and overcome.

I would suggest to you, however, that it's our view at the Canadian Society of Immigration Consultants that your efforts with Bill 14 are complementary to the efforts that have already been undertaken a number of years ago by the federal government, in that the provisions that you will be devolving to the law society will actually strengthen our ability to enforce the provisions for people who would try to circumvent our regime in terms of the standards and mechanisms we've put into place to ensure ethical and competent practice in the interests of the consumer.

So on that note, I'd like to thank the committee again and I'm more than willing to answer any questions you may have.

The Vice-Chair: Thank you very much. We have 18 minutes for comments and questions. I believe, Mr. Kormos, you have the lead.

Mr. Kormos: Thank you, gentlemen. Legislative research has spent a lot of time assisting us, getting us a copy of the Mangat decision, which—help me—predates the regulation that requires membership in CSIC. The critical language was, “or other counsel,” in Mangat.

Mr. Ryan: Yes.

Mr. Kormos: Okay.

And it was because the federal statute said that, that that paramountcy principle applied. Had it not said that, then there would have been a vacuum. Is that correct?

Mr. Ryan: There was also the concept of the foreign national's right to obtain the counsel of their choice. A

lot of the thinking, from reading the judgment, turned on that: the ability of the individual to choose who they would feel best or comfortable with representing their case to the various organs of immigration.

Mr. Kormos: Now, the part where there's still some lack of clarity, at least on some of our parts, is, when does the CSIC membership requirement kick in? Does it kick in with immigration consultants who assist people in preparing applications before those applications are, in fact before an immigration officer? You'll understand why that's important to some of us, because that means there's a gap in the front end where the CSIC requirement may not apply. And that's where some of the most atrocious rip-offs are taking place; right?

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Mr. Ryan: I think, to do justice to a correct answer to you, the federal government has interpreted the regulations narrowly in that it believes that its processes will only apply once an application is before the minister; in other words, an application has either been filed in front of the minister or an application has been received by one of the visa posts or embassies overseas. In our view, the regulations are much more expansive and in fact talk about “anyone who advises, consults or represents for a fee.” This creates a dilemma, and has created a dilemma, not only at the federal level but at the provincial level, because, Mr. Kormos, respectfully, even Bill 14 will have difficulties dealing with this issue. To get at that person under the banyan tree or in the basement who is deliberately trying to circumvent the regulation requires the will of governments to enforce. There are resourcing issues. There are all sorts of things that factor into that.

Immigration has made the choice; they have the resources to look at the stuff that's before them. We, however, at the society interpret the law to say that it's much wider than that; in fact, anyone who advises, consults or represents for a fee falls under the ambit of the regulation. And counsel has advised us that that's a correct interpretation.

Mr. Kormos: I understand the problem, though. Let's assume for a moment that you're not correct, that that narrow interpretation applies. That means that there would be, then, room for provincial regulation of those people doing that work up to the point where that application is placed in front of an immigration officer. So the dilemma is, hearing what you're saying and knowing that there's—again, we've already talked about this. Of course, we can't control the people in the Tim Hortons coffee shops giving legal advice or immigration advice; here and now, as we speak, it's happening. But I'm talking about the people who run offices. Some do good work but a whole lot do really, really scurrilously bad work and rip off people and create all sorts of false hope. What's happening? If the federal government doesn't agree with you, how are those people going to be taken to task?

Mr. Ryan: I think I'd like to call the committee's attention to the actual provisions under—I think it's appendix 1, is it? Appendix 2, the penalties. The Immi-

gration and Refugee Protection Act, under sections 124 and 125, does provide some pretty stiff penalties for individuals who would do exactly what you're saying, Mr. Kormos. I'm just going to read it.

"125. A person who commits an offence under subsection 124(1) is liable

"(a) on conviction on indictment, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both; or

"(b) on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both."

Mr. Kormos: Sure.

Mr. Ryan: So my point, to respond to you, is that certainly at the federal level there are tools within the act under the general offences to get at these individuals. I think it's fair to say that the reason we feel Bill 14 is complementary to the provisions in the Immigration and Refugee Protection Act is because it provides an extra way to get at these individuals who are deliberately circumventing the system in that it empowers your regulator if they are practising law. This is in addition what already exists; okay?

So we believe that the federal and provincial laws are really complementary to each other in what's being proposed here, and this is why we're supportive of it; we think it's in the interests of the consumer. However, we think that you don't want to get into a situation—the danger that we examined on the minister's advisory committee, because we looked at this from a whole bunch of different angles—of creating a patchwork of standards, regulations and qualifications across the country. You need a national standard. Certainly, if the provinces feel that they want to regulate, constitutionally they can do so. But that, I think, to be of the most benefit to the consumer, has to be complementary to what exists at another level of government. Therefore, we get a one-two at the people who are trying to circumvent the regs.

Mr. Kormos: And 13.1, which is the reg in question here, the contentious reg—"No person may, for a fee, represent, advise or consult with a person who is the subject of a proceeding or application before the minister and officer of the board"—has not been litigated.

Mr. Ryan: No. That's not been tested. Our interpretation of that is that the process begins the minute a person seeks advice or consultation about putting an application forward, not when it physically arrives before an immigration officer.

Mr. Kormos: There seem to be a whole lot of potential test cases out there.

Mr. Ryan: That certainly has been the modus operandi for the last nine years, yes.

Mr. Kormos: Yes, but how come it hasn't been—

Mr. Ryan: Mr. Kormos, the law society and the regulation of other professions have been around for 100-some-odd years. The law has evolved. It's been perfected. Mechanisms have been perfected.

In the last presentation, I heard you question why things haven't been done. It takes a while to run out a

regulatory body or a professional body. Currently, we have been on a two-year plan. We've ramped up our professional body to regulate nationally in the space of about two and a half years. We have just switched on our full hearings component. It takes that long to do the research, to put the right people in place, to have the investigations come to the point where you actually have a hearing to discipline. It's not something that you can just go down to McDonald's and order, with extra fries and a Coke. There's a lot of development, a lot of hard work that goes into rolling out a professional body, and the law that goes along with it sometimes is playing catch-up.

It's my belief that in the regulation of consultants, the regulation of paralegals, the Ontario government is going to be faced with the same issues. The law society is going to be faced with the same issues. You're going to have the same test cases. You're going to have people who are going to resist regulation simply because they want to resist regulation, and there is going to be a body of law that's going to be built up over time about the law society's ability to regulate paralegals if, in fact, it becomes the regulator.

Mr. Kormos: That's fair enough. I suppose the resistance is going to be even greater if the people being regulated don't see the regulation as legitimate, or the regulatory body as legitimate.

The Vice-Chair: Thank you, Mr. Kormos. I'm going to go to the government side. Mr. Zimmer.

Mr. Zimmer: To the registrar, how many members do you have?

Mr. Ross Eastley: Currently, we have 1,354.

Mr. Zimmer: How many potential members are out there?

Mr. Eastley: That's hard to say.

Mr. Ryan: I may be helpful with that, Mr. Zimmer.

Right now, we have a national system of education and colleges for new people coming into the profession. We currently have co-operative partners with five, I believe, universities and colleges across Canada which are offering full-blown immigration practitioner courses. Our enrolment there for new people coming into the profession is ranging about 400.

Mr. Zimmer: You've got 1,300 members out there, and I understand the hammer to get the member in is that, to put it bluntly, you can't do business with the feds unless you're a member of the society. Is that right?

Mr. Eastley: Yes.

Mr. Zimmer: All right. So that's how you get your 1,300 members.

Mr. Ryan: It's a delayed hammer.

Mr. Zimmer: I know.

Mr. Ryan: And if I may explain—

Mr. Zimmer: But you've got to be a member of the society or you can't do business with the feds at the immigration board and various other things. I gather that when a member of the society writes in or something, he's got to identify he's a member in some way.

Mr. Eastley: It would be recorded on our website. So the government of Canada can check the website in order to determine whether they're a member.

Mr. Zimmer: How long has the organization been set up?

Mr. Ryan: We incorporated in November 2003.

Mr. Zimmer: Okay, and how many members have you disciplined in three years?

Mr. Ryan: As I said in my earlier submissions—

Mr. Zimmer: I just want the numbers from the registrar.

Mr. Eastley: It depends on what you recognize as discipline. We've had—

Mr. Zimmer: How many complaints have you had?

Mr. Eastley: We've had in excess of 820 complaints, and we have disposed of 640.

Mr. Zimmer: How many of those have gone to a sanction?

Mr. Eastley: All of them would have been, in terms of—what do you interpret as—

Mr. Zimmer: Well, for instance, if the law society gets a complaint, when it's disposed of, it's either dismissed or it's upheld, and if it's upheld, there's some kind of sanction.

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Mr. Eastley: Three hundred and sixty-seven of those files in which there were sanctions involved.

Mr. Zimmer: And typically, what was the sanction?

Mr. Eastley: There's a wide variation, because we employ a lot of mediation as part of the sanctions, so as you are getting together with the complainant—

Mr. Zimmer: How many people got kicked out of the society?

Mr. Eastley: It would have been two who have been kicked out. You have to bear in mind that the society itself has the discipline part of it that is coming into place, plus the process that they go through for admission, the writing of exams and things like that. We've had a number of members—

Mr. Zimmer: But two members have been kicked out.

Mr. Eastley: Two members have been kicked out, but we've had in excess of 300, probably, who are not able to meet the criteria of the society; thus—

Mr. Zimmer: They're not members.

Mr. Eastley: They're no longer members.

Mr. Zimmer: And they're not a part of that 1,300.

Mr. Eastley: No, they're not.

Mr. Zimmer: Your society catches anybody who, broadly speaking, has to do business with the feds, but you have no jurisdiction or ability to regulate anybody who's out there as an immigration consultant who, broadly speaking, is offering general advice to people: "Go here, go there, do this." As long as the consultant doesn't himself or herself do business with the feds, they don't have to be a member of the society. Is that right?

Mr. Eastley: If they don't do business with the federal government, no. They can operate—

Mr. Zimmer: So there's still a need, then, for regulation of all those folks out there in the world of general immigration advice?

Mr. Eastley: I think that was what the chairman was referring to.

Mr. Ryan: Mr. Zimmer, if I may assist: Anyone who charges a fee for rendering advice, consultation or representation is subject to the amendments. You used to be on the IRB; you know that the mechanism or the model that's been proposed and adopted by the federal government is one that's a co-operation between industry and the government, where the government has retained the right to enforce against those individuals who are holding outside. The mandate of the society is exclusively to oversee the activities of our members.

Mr. Zimmer: But from a practical point of view, if the consultants are not doing business with the feds, if they're just out there doing general advice kind of stuff, how do you get at them?

Mr. Ryan: That's the job of the enforcement agencies. We have protocols with the government where, if we become aware of consultants who are doing that, accepting a fee and are not members of the society, we will advise the government. The government works along with its enforcement agencies, the CBSA and the RCMP, to investigate and prosecute if necessary. That's their role. Our role is to control the activities of our members.

Mr. Zimmer: On a more general level, because of course an issue with the law society or indeed other any other professional body is how governable their members are, what's the history been with your 1,300 members? Are they reasonably governable?

Mr. Ryan: Moving from an unregulated space to a regulated space, it's fair to say that the profession has embraced the idea of being regulated. In fact, I would say the majority of our members are happy and are proud to be members and to be in a regulated profession. You have to understand that it's an important distinction.

However, there is a core group, a small group, which does not want to be regulated. Because CSIC adopted a policy of standards, we made the choice that we would have verifiable standards for competency at the get-go. We have a group that is being reluctant because (1) they're afraid of standards, or (2) they still haven't made the adjustment.

"Standard," by definition, Mr. Zimmer, means that some people won't make that standard. We have tried to help them through this, but at the end of the day, in order to have a standard that serves the public interest, some people won't be consultants after this is over.

Mr. Zimmer: Those people who are unhappy, generally what form does their resistance take?

Mr. Ryan: It depends on what their particular issue is. The committee may not know, but one of the requirements or competencies that an immigration consultant has to demonstrate is proficiency in one of two of Canada's official languages to a level where they can understand complex legal issues and be able to make an argument to an officer or to a hearing or tribunal, either

in English or French. We have a system of testing which tests members for this, which is offered by third parties such as the British Council, the IELTS and the University of Michigan—there are a number of providers that we use—but the resistance has been largely because of the language requirements. People have been having some difficulty meeting the language requirements.

On the other side of it, on the professional standards test, we have seen a good number of our full 1,340 members already move through and qualify for full membership. I think in the area of 730 of the 1,350 members now have passed the full professional standards. We have two levels of testing. We have entry level testing and the full membership testing.

I think it's been resistance and fear—the fact that you're moving from an unregulated space to a regulated space. It's also something that we've seen in other jurisdictions as well, such as in Australia with the Migration Agents Registration Authority, and in the UK when they brought their regulation in. I would suggest to you that when you try to regulate the paralegals, you will also experience this kind of, "Please don't regulate us."

Mr. Zimmer: How long have you been the chair?

Mr. Ryan: I've been the chair since November of last year. I was the vice-chair prior to that.

Mr. Zimmer: This was the organization that someone by the name of Trister was the chair of?

Mr. Ryan: He is our former chair; that's correct.

Mr. Zimmer: And there was some—I don't know all the details—dust-up and internal goings-on and he quit or he got fired.

Mr. Ryan: No, no. "He quit," I think, is a good way to put it. He resigned.

Mr. Zimmer: He was critical of the organization? What was the essence of his criticism?

Mr. Ryan: I'm really not here at the committee to comment on the essence. I think Mr. Trister has already spoken to the committee about what his concerns are; I certainly read that testimony. However, I will say that the majority of the board of directors, which is tasked with running the society in a cabinet democracy, which the board exercises, including 50% of the public interest and 50% consultant members who decided to stay on, realized that the allegations that Mr. Trister had made were serious. In response, we commissioned a special audit, where we expanded the scope of the audit to investigate some of the allegations. That audit opinion by an external auditor came back clean.

The Vice-Chair: Thank you, Mr. Zimmer. The time has expired.

Thank you very much for your presentation.

R.H. ASSOCIATES

The Vice-Chair: I would like to now call forward R.H. Associates, please. Good afternoon, sir.

Mr. Robert Heughan: Good afternoon, Madam Chair and esteemed members of this committee.

The Vice-Chair: You have 30 minutes to make your presentation. If you don't use that entire 30 minutes up, then there is opportunity for committee members to make comment or ask questions of your presentation. Could you please identify yourself for the Hansard and then proceed.

Mr. Heughan: Robert Heughan of R.H. Associates.

The Vice-Chair: Could you get a little closer to the mike? Thank you.

Mr. Heughan: Good afternoon again. My name is Robert Heughan. I've been a court agent for about 18 years, practising mostly in the GTA. My curriculum vitae you can peruse at your leisure. I'm not going to get into it too much, the areas of practice that I have been practising over the years. I've also worked for solicitors on a contractual basis for about 15 of those years, which I've set out in my experience in my curriculum vitae.

I'm sure that you've probably heard a lot of the points I'm going to make in these now two weeks of hearings. However, I started studying indigenous spiritual law of the Seneca Indians perhaps 20 years ago, and an elder there at the Seneca Indian lodge that I first visited back in 1991 near Cleveland, Ohio, said that you may hear the same thing again and again, but the thing is, you can learn something unique and different from it, because each of us is a different expression of spirit. What one has to say, even if it's on the same point, can be said in such a way that if you listen and you view it, you will pick up something new and learn something new again from the thing repeated. It's just a little nugget that I learned a long time ago from a Seneca Indian elder which certainly has served me well in my own life since I've been working with that.

Also, I'd like to say that it's somewhat exciting to see you all in person, because usually I see you on the TV, for instance, and to be here in person is somewhat exciting.

1700

Mr. Kormos: Television does add weight.

Mr. Heughan: Well, yes, it adds a little bit of weight. You look a little more trim and svelte in person, Mr. Kormos, but certainly no less dapper or vital.

The first thing I'd like to talk about, which has really been on my mind since I've been looking at the whole history of affairs of agents in court, or paralegals, as some call us, trying to organize and to get established as a professional group, is the conflict of interest issue. The Law Society of Upper Canada, which I will refer to as the LSUC throughout my presentation, has been called upon by the Attorney General of Ontario, a government minister, to regulate another private interest group which is the court agents. I think it's patent and obvious on its face that that is a conflict of interest. In the research that I've done, I haven't found any private group that at least continues to exist that has been regulated by another private group.

I think an honourable member of this committee, Mr. Kormos, actually commented on this last week—I don't know whether I'm paraphrasing exactly—that the gov-

ernment, really, and the Legislature are absconding from their responsibility to regulate us, handing it over to the law society. In fact, in the draft legislation, I see very little about regulation in there. It's kind of left ad hoc as to what shall be constructed and drafted upon after the bill is passed.

Also, I think one of the previous presenters, perhaps for the PSO—I'm a member of the PSC, which has now merged with the PSO, and they have by far the greatest number of court agent members. They've been in existence since 1987; the PSC, I think, has been in existence for about seven or eight years. They have a very comprehensive white paper about self-regulation, which includes such areas of importance and necessity as self-government, parameters of practice, discipline and regulation, registration, licensing, educational experience requirements, a fee and insurance structure, a code of conduct and ethics, and protection for the public. Everyone in the society must have errors and omissions insurance and, as I've already said, I think we're by far the one that has the most members of such a group. I think all paralegals would rather be regulated by a group which is made up of its own, as opposed to a group that's in direct competition.

I'd like to comment a little bit about cost. My learned friend Susan Koprich has told me that to get this up and running—she has been confided in about this by a spokesperson for the LSUC—would cost \$5 million to \$8 million, and that does not include the cost to administer it annually. If the PSO model were given credence by the government and we were allowed to get up and running on our own and given some seed money and tools, we'd be able to get this running. Also, that same LSUC spokesman has said that we will not be charged more fees than a lawyer. To me, that's hardly fair and equitable. Reading between the lines, that probably means that we're going to be charged just as much in terms of fees as a lawyer, and yet certainly not have the earning power to earn as much as a lawyer.

Another example I'd like to put before this committee is that the LSUC once had the management and governance of legal aid. That was taken away from the law society in 1988, and a management corporation was set up. Principally, my research shows that one of the main reasons this was done was because the law society has a record of underestimating costs. In fact—and this was taken from the legal aid website—between 1980 and 1990, as an example of a 10-year expanse of time, the total costs of administering the plan doubled from \$36.8 million to \$73.6 million, to run the plan on an annual basis.

I'd like to talk a little bit about the validity of court agents and paralegals as a profession. Mr. Chudleigh, another esteemed member of this panel, commented last week during this forum that to have the LSUC regulate us is like having Wal-Mart regulating Zellers; I trust I am paraphrasing close enough. Mr. Chudleigh is precisely right. Other professions do not have what is being proposed. I don't know of any that has a competitor

regulating. We have operated for more than 30 years with what is in place with the law regulating us. Most statutes and court precedent, as far as the procedure in whatever court or tribunal you are before, have tools for the trier of fact to exclude somebody who's incompetent. Not all, but generally speaking every court or tribunal has the ability to control its own process. They have the ability to exclude a person who's found to be lacking, or perhaps apply to a Superior Court judge to have that put into place.

There are already safeguards in place. The LSUC would have one believe that this is the wild, wild West and we're in something akin to that, but that is furthest from the truth. The thing is, we are distinct from lawyers. We approach a case presentation differently and we organize a case differently. We deliver legal services differently and at a much lower cost.

I'm sure you've heard quite a bit this week about Mr. Justice Cory's report that came out in May 2000, Dr. Ianni's report that came out in 1990, and a little bit about Professor Zemans's report. All of these individuals are highly respected and esteemed members within society, yet next to nothing of what, for instance, Justice Cory, a retired Supreme Court justice of the highest court in the land, said is actually being proposed within this legislation. That should be reviewed now.

What is the agenda of the LSUC as far as regulation is concerned? They're going to be given free rein if this bill goes through as it is. The LSUC was against most of Justice Cory's recommendations, virtually without exception, such as in the area of family law, the Financial Services Commission of Ontario, criminal law, provincial offences carrying incarceration, wills, simple real estate conveyance, small claims court appeals, landlord/tenant appeals and appeals at the first level of a provincial offence appeal. Justice Cory recommended that we be able to have carriage of those matters, but either lawyers' associations or the LSUC felt we should not appear or only appear in very restricted circumstances in these various areas.

In family law, there was a division on when a paralegal should be able to act on an uncontested divorce. Some allowance was made by the LSUC at the time of the report of Mr. Justice Cory, but there's certainly nothing about that, for instance, in this particular legislation.

At the time, Justice Brownstone at the Ontario Court of Justice (Family), what was then the Ontario Provincial Court (Family), in 2000 estimated that between 75% and 85% of litigants before him were unrepresented. Justice Zuker at the same venue estimated that 50% to 75% in his court were unrepresented litigants. The situation really has not changed much now.

As a matter of fact, in a general comment, Madam Justice Beverley McLachlin, the Chief Justice of the Supreme Court, noted very recently that—I'm not sure whether I'm commenting on her comment exactly, but it was something along the lines that access to justice is diminishing and it's becoming harder for the average

man or woman within our society to have that relief, have that access to justice, which I think is the cornerstone of society. You need to have that in a civilized society so that one can forcefully put one's argument before an impartial tribunal, before the trier of fact, in order to be dealt with in the most auspicious and just way.

1710

To get back to the family issue, lawyers do not fill this void to assist these vulnerable people, Justice Cory said. Often these people are intimidated by court forms, even the simplest, by court procedure, even the most straightforward, and have difficulty with either official language. They desperately need assistance, and none is forthcoming. Yet the position of the lawyers' associations and the LSUC—various lawyers' associations, and in particular the family bar—is that these people should be denied help from licensed paralegals. Justice Cory recommended that paralegals be able to act, having special training in the area. I in particular have acted in Family Court for over 15 years on leave from the justices, and I've helped people at many levels across a wide cross-section of society.

Another area, for instance: Few lawyers that I've seen actually practise on a regular basis in WSIB law. Justice Cory commented on that in his report, that that's a greatly required service, especially for assisting the injured worker—not so much companies, because they have the resources and money to have a lawyer, but injured workers.

Justice Cory commented throughout his paper that there are many paralegals who are competent, dedicated and reliable, and that remains today at large. The late Dr. Ianni, the former professor of Osgoode Hall Law School—and I think at the time he wrote his report, in 1990, he was dean of the University of Windsor law school—recommended more or less the same parameters, except that Dr. Ianni was a little more liberal in what he thought paralegals should do with representation in criminal court.

Mr. Zimmer: Small-l.

Mr. Heughan: Pardon?

Mr. Zimmer: Small-l liberal.

Mr. Heughan: One of the things Dr. Ianni said was that he felt the Ministry of Consumer and Commercial Relations—and I think Dr. Ianni had it right—should be the one to be regulating us.

The foregoing was put forward to emphasize that paralegals/court agents are a valid profession within the court system. They are not simply assistants to lawyers.

Given that we are a competitor but giving a different service than that of a lawyer, why should we be governed by lawyers? Who wants this legislation reflecting that point? I don't believe it is in the paralegals', nor the public's, best interests.

Both Dr. Ianni and Justice Cory emphasized—and I believe this quote that I've written is from Mr. Justice Cory's report—that it is of fundamental importance that paralegals be independent of both the LSUC and the province of Ontario. However, Justice Cory agreed with

the LSUC that perhaps the governing body should be modelled after the Legal Aid Ontario corporate model. Justice Cory further emphasized that the governing body must be able to function independently of the province and the LSUC.

I'd like to comment briefly on some other professions. For instance, a good example is denturists and dentists. In 1973, with then-Bill 246, groups that wanted better dental care were calling upon dentists to provide reliable, well-fashioned dentures at a better cost, and the dentists at the time responded that they would start with denture therapists and provide a cost-effective denture. The denturists at the time were filling this void and dentists were attempting to destroy the legitimate domain of denturists. After many years of fighting, the denturists were given full licensing in 1993, with full scope of practice as an independent profession.

I think the fight there is somewhat analogous to ours, in that we've been providing service in many areas where lawyers also provided service in the past but no longer do so, either because there is no interest or because it is not cost-effective. With a lot of what I do, some of the lawyers I am associated with or know are not interested in providing these services. In the comparison, as the denturists did and do, paralegals/court agents now fill a void. Then, with the dentists in the dental industry or the dental profession of service, the denturists came along to fill a void by giving a professional denture, something that the dentists weren't providing very well.

Other areas of interest are the doctors and the other health care providers; I've listed a number of them in my summary. Likewise, in the health care field, there are many who do aspects of what doctors did but no longer do because they don't have interest or it's not cost-effective—and the doctors are trained to do more complex and highly involved things—such as midwives. Midwives deliver babies. A lot of people in society want the choice of being able to have their baby brought into the world with a midwife, outside the hospital, and they want the expertise of a midwife.

Respiratory technologists take care of very sick people at times. They monitor respiratory and cardiovascular disorders. Often, people with these disorders are very ill and their condition can be life-threatening. They also may provide emergency services such as intubation for an artificial airway to keep a patient who's in distress alive, with suctioning to keep the trachea or lungs clear and monitoring of mechanical ventilation for those who require assistance to breathe.

Others who work side by side with doctors but have their own governing bodies are nurses, chiropodists, chiropractors, naturopath doctors, dietitians, massage therapists, medical lab technologists, medical radiation technologists, optometrists, opticians, occupational therapists, physiotherapists, psychologists, pharmacists—to name some who provide health care in a health care team and all have their own regulations.

Another group where there are several different types of people providing services is the accountants. We have

chartered accountants, certified general accountants and management accountants, all providing a niche within the accounting services.

So, to me, the ultimate question is, why is law so different from the medical or dental field that we have to have but one regulator? There is no doubt the PSO or another body could easily come up with a scope of practice governing rules and regulations for paralegals and court agents. All we need are the tools and to be given a chance by the Legislature.

It is my submission that the LSUC professes that a prime plank of their driving force in this legislation is to protect the public from unscrupulous paralegals. The LSUC has not been able to protect the public from unscrupulous lawyers. I have people in my office almost on a weekly basis complaining about how they felt they were dealt with improperly by a solicitor. This bill is not about the lawyers protecting the public interest; it's about lawyers protecting their own interests, in my view. That's the crux of it.

As far as my presentation goes, what I would like to leave you with is that if you sit with this, there is an overreaching; it is just not fair and equitable. We can always look at something from our self-interest. We exist as individuals, but we also exist in the greater picture. We collectively, together as a society, are moving forward, so that the whole is considered as apart from any particular group controlling other groups. It needs to be arrived at by the whole and for the greater good of the whole. I say that if you look at it from that point of view—and I would urge the members of this panel to look at it that way—you can see that the way this legislation is coming into being at the present moment and what is within it is not in that fair and equitable and wider view.

There are a couple of other things too that I'd like to put on the record, which I've heard some of my previous colleagues in different areas talk about.

As far as the PPAO is concerned, the PPAO was a conglomeration of a number of different paralegal societies, and it was brought into being, I think as Mr. Dray said in his presentation the other day, to try to bring a consensus upon all different groups of paralegals. But in October 2005, Mr. Parker—I'm not sure what position he held at that time—had written a letter to the insurer saying, "We don't need insurance any further because we're going to be disbanding. We're not going to be continuing on." Then, in fact, the members voted to dissolve because they did not like the direction that their executive was taking them. That vote was taken on January 14, 2006.

1720

The members who came to the PPAO were already existing, and by and large all of those members already had E&O insurance before they even came to join the PPAO. I'm just putting forward that point because those are the facts of the matter.

I would say that if we were given the chance to regulate, I think it would be in one of two ways. Either we would be given two years to go forward and perhaps have the same route as the real estate agents did—have a

paralegal registrar who is part of the ministry of consumer and commercial relations or of government services help us along with regulation to come into place for two years, and then at the end of that have the full working model in place and go forward in that way—or, I think six months has been put forward. Some of my colleagues said that number has been bandied around. That would be fine if all the players were brought to the table who needed to be, such as participants from the government, participants from the law society, and each segment was given time limitations that it had to be done by, so that at the end of six months it was done and there's no shotgun clause that upon default the reins of this regulation be given back to the law society.

If there's any time for further questions, that would be the sum of my submissions, and I thank you.

The Vice-Chair: Thank you very much. We have five minutes remaining, so I'd say we start with the government side.

Mr. Zimmer: Thank you very much for your presentation and the material.

The Vice-Chair: Mr. Kormos.

Mr. Kormos: Thank you, Mr. Heughan. You are the final submission from the public in these hearings. It's an unenviable position. I suppose you're sort of like Elizabeth Taylor's last husband: You know what it is you're supposed to do; you're just not sure how to make it exciting. But I do compliment you, because you've managed, notwithstanding that you've underscored what so many have said, to bring some yet additional insight into the issue.

I think one of the problems the government has, and perhaps the law society shares it with the government—because let's understand: The Attorney General asked the law society to undertake this regulatory role; that appears to be very much the case. I don't fault the law society for having agreed to this request from the Attorney General. The problem is the clear, clear statements by Ianni back 16 years ago, commissioned by the last Liberal government, and by Cory in 2004. And you can disagree, and there is disagreement, obviously, about, for instance, Cory's recommendations in terms of scope of practice, right? But the fundamental observation that both made about the inherent, basic—be it real or perceived—conflict of interest is a pretty big hurdle to overcome, I submit. This is where I agree with you.

What I find interesting is whether or not over the course of the next several days there will be opportunities undertaken by the government to overcome the reality or even the perception of bias by altering things like membership, things like voting rights, things like the number of benchers, or perhaps recognizing that the government has a role in regulating to the point where paralegals can become self-regulated.

I thank you very much for your comments and your patience over the course of several days here.

Mr. Heughan: Okay, thank you. I'd like to add that I'm not anti-lawyer. I have many friends who are lawyers. There are many lawyers who are members of the bar of this province who do a great job, and I've worked

with them. As with any other profession, they have some bad apples. We have some bad apples. Most paralegals want to be regulated, but they want fair regulation. As a matter of fact, some of the tenets of what our white paper is concerned about—we're taking it from the model that the law society has. The problem, the way I see it, is that the lawyers want the whole power; they want their pie, to keep it. The universe is plentiful. There's enough for everybody.

Mr. Kormos: And it seems to me that one of the core differences, when you scrape away all the other stuff, is around scope of practice. That's why it's of some con-

cern that we won't just come clean here and now in a public forum, the Legislature, and talk about scope of practice. That's just an observation.

Mr. Heughan: It would be a good idea.

The Vice-Chair: Thank you very much. We certainly want to thank you for attending at such a late hour of the day.

This committee is now adjourned until Wednesday the 20th at 10 a.m.

The committee adjourned at 1726.

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Comité permanent de la justice

Loi de 2006 sur l'accès à la justice

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 20 September 2006

Mercredi 20 septembre 2006

The committee met at 1009 in committee room 1.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006
SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning, everybody. Welcome to the standing committee on justice policy. Today, we're here to consider Bill 14, clause-by-clause.

Mr. Peter Kormos (Niagara Centre): Chair, if I may, I have a matter to raise before we do that. I propose to make a motion. I have copies for the clerk in sufficient numbers to distribute to members of the committee.

Chair, I move that this committee defer clause-by-clause consideration of Bill 14 so that the committee can hear further submissions from members of the public.

The Chair: Any debate?

Mr. Kormos: Yes, there is. The opposition parties were accommodating of the government in terms of agreeing to these hearings taking place during these pre-legislative sitting dates. I for one, on behalf of the New Democrats, sincerely hoped that the committee hearings and the comments made in the course of these hearings would address the numerous concerns about the proposal that are held by many across the province: the Ianni report, of course, which dates back to the last Liberal government; and the Cory report, which of course was initiated by the last government, the one previous to this one, the Conservative government.

While there may be genuine disagreement with any number of recommendations in those reports about the scope of practice, the structure of the regulatory body itself, both of those authors premised their reports on this observation: that there is a conflict of interest between lawyers and their law society and paralegals. As you know, Chair, a conflict of interest is a conflict of interest whether it is real or merely perceived. It was my sincere hope that during the course of these hearings, those concerns would be addressed.

Of course, Professor Ianni is no longer with us. Judge Cory is alive and well, chancellor at York University. I found it strange that the government would not have, for instance, solicited the participation of Judge Cory in these hearings to respond to the dismissal of his very clear and unambiguous declaration that there is an inherent conflict of interest. I found it even stranger that there was nothing put before us that in a meaningful way addressed that, nor were there any efforts on the part of the law society to address that by permitting paralegals in the proposed regulatory regime to play a more active role in the law society, which would have gone some way to addressing the conflict of interest concerned, wouldn't it have?

It was interesting because, notwithstanding that we heard from Paul Dray, a lay benchler who is also a paralegal, Mr. Dray didn't tell us what he told the Law Times. It was only recently that, doing the Googling that one does in this Internet world, I encountered the Law Times article authored by Patricia Chisholm, in which Mr. Dray stated that he supports most of the recommendations in the subcommittee report to the law society "but noted that the new plan is almost impossible to sell because, while paralegals will be regulated by the law society and pay dues to it, they will not be able to join." Mr. Dray said this.

"So we're going to pay dues to a body to regulate us, license us, and if we go through the recommendations, we're going to have the same standards as lawyers for trust accounts, the same standards of lawyers for conduct, the same standards when it comes to ethics. But when it comes to being a member of this society, we're not going to be members," said Dray."

The article goes further and says:

"He also suggested that there appears to be a contradiction between some of the matters that paralegals perform now, such as giving legal opinions and drafting and filing documents, and matters that the report"—of course, that's the report that is now part of this record, and that is the Task Force on Paralegal Regulation report to convocation, prepared by the Policy Secretariat—"seems to conclude" that those areas "should not be performed by paralegals, because they constitute the practice of law."

Indeed the report—referring to page 45, "Summary of Recommendations," which is all we've gotten so far from the law society in terms of what they anticipate or contemplate for scope of practice—talks about Small Claims Court, provincial offences matters, tribunals, provincial

boards, agencies and tribunals that allow for appearances by agents, appeals under the Provincial Offences Act, because section 109 of the Provincial Offences Act authorizes agents to appear on appeals.

One of the most dramatic areas out there in terms of access to justice is in the family courts. I've got to tell you that I, for one, have serious concerns about paralegals in family courts without a clear standard expressed for what the standard is for training, because family law is so complex and, at the end of the day, it involves in so many cases the interests of children. But the reality is that the legal aid system in this province, this government's legal aid program, has not been sufficient to ensure legal representation for low-income litigants in family courts, most often women. We've got some anecdotal evidence, but I would put to you that it's common sense that Family Court has one of the largest groups of unrepresented parties before it. Our failure to more concretely discuss the needs of litigants in Family Court and whether or not a paralegal regime is going to help meet those needs is a serious omission. We had one deputy Small Claims Court judge appear before us. We heard from nobody in the Family Court bench who would be in a good position to talk to us about whether or not paralegals have been effective and what that bench would expect in terms of training for paralegals if they were to be permitted to represent litigants in Family Court—nobody from the criminal court bench, the provincial courts, talking to us about their experience with paralegals in their courts, whether or not they should be permitted, and if they were to be permitted, what type of educational standard there should be.

I've got to tell you, I'm very concerned. We heard from one private college that presented a one-year program with a 60% pass rate; in other words, you had to get 60% on your exams to pass. To give credit to Humber College, their CSIC program—it's easy to Google—requires a 70% average to pass. So at least you have to know 70% of the stuff before you're deemed capable of appearing before the IRB, assuming you meet the other standards of the CSIC—which again brings us to the CSIC, a real problem. I wasn't very gratified by how the CSIC responded to—I remember, the first day we were here, there were some strong criticisms of the capacity of the CSIC to adequately regulate its members. And it may well have that capacity. I wasn't very gratified by how CSIC responded to it, but it still leaves the question remaining and outstanding, and that is, does this regulatory regime include immigration agents? CSIC says they cover anybody who even prepares a document. Well, that's not what the regulation appears to say and that's not what the federal government appears to say. We haven't got the answer to that question. I would dearly like to know: Is a regulatory regime for paralegals going to regulate those people doing immigration consulting scams out there, whether they're federal members of Parliament or not? We don't have those answers.

1020

There has been a failure to produce even a single community from amongst those people conducting them-

selves as paralegals out there that approves of the law society as a regulatory body in the context of the bill as it exists now. I've got to tell you, I went through the proposed amendments from the government, and while incorporating the title "paralegal" into the legislation is not an unsound proposition, there doesn't appear to be anything else—I will go through them one at a time—that indicates a response to the submissions made to this committee.

I note even today that we're going to be voting on clause-by-clause. When you're in government, people come to a committee as directed by the whip, and with all due respect, there are only two members sitting on the government side who have heard any of the evidence put before this committee over the course of several very exhaustive days. Mrs. Van Bommel was here listening very, very—she really was. She was an active participant in those hearings and performed an admirable role in terms of how she questioned participants, engaged them and, quite frankly, approached the matter very fairly. The parliamentary assistant, of course, disappeared for three days; he was missing in action. He didn't even bother showing up. So no, I don't think we're ready to deal with clause-by-clause.

This is another Bryant bomb that has just blown up in his face. Can you imagine anything more shabbily developed, with a complete failure to address some very long-standing, fundamental concerns? Quite frankly, it's not for the opposition to deal with that. It's not our job to steward government legislation through the process; it's the government's job. I submit to you that there's been a total failure.

This is the last kick at the can. Don't for a minute think that, oh, there's going to be some tinkering with this a year down the road, two years down the road or three years down the road. Even if you're not interested in the paralegals per se, then demonstrate some interest in folks out there who can't afford what everybody acknowledges are increasingly unaffordable legal fees. I don't begrudge lawyers those hourly rates, because operating a competent, capable law office is a very expensive process in and of itself. Access to justice, my foot.

Here we are, engaged in what I sadly perceive and suspect is but a charade of clause-by-clause. How many amendments from the government? There are well over 100. I can tell you, there's one from the New Democrats, because it's not our job to fix the bill. I say that it's not a matter of fixing the bill as much as it is a matter of resolving that fundamental concern raised by Judge Cory. If you want to dismiss Judge Cory as some sort of flake or as somebody who is so unlearned in the law that his fundamental observation about conflict of interest should just be dismissed, feel free to do so. I won't be so bold. Come on. The man is one of this country's most distinguished jurists, and continues to hold a responsible position and to be held in the highest of regard. There hasn't been a single legal refutation, not a single argument presented to refute the observation by Ianni and Judge Cory that there's a conflict of interest. Certainly

nobody's persuaded any significant number of paralegals, if any, because even those who appeared as individuals to adopt the proposition, subject to a whole laundry list of concerns, didn't dispute the conflict-of-interest observation. This causes me great concern.

The other observation is this: Because of some very stupid comments by Mr. Chudleigh, we were compelled to recess for half a day. Mr. Chudleigh, I don't think, was motivated by malice; he simply didn't know any better. He attacked the integrity of not only Mr. Zimmer and myself—and that's fair enough, I suppose—but he attacked the integrity of Mrs. Elliott and her ability to deal in a responsible way with legislation before this committee. We were compelled to recess for half a day, and of course the matter was resolved. That's between Mrs. Elliott and Mr. Chudleigh, and there you go, but we lost half a day. There's a long waiting list of people who wanted to participate in these hearings. Because we had to use empty spots—vacancies—and some so-called no-shows to accommodate the people who had to be adjourned or put over from that afternoon, that waiting list was denied the opportunity to occupy those empty slots. Do you understand what I'm saying? People were denied the opportunity to participate in this hearing through no fault of theirs, and there was some suggestion at the time about an effort to extend the hearings at least by half a day to provide some slots for those people who were displaced by the people who had to be called back because of Mr. Chudleigh's stupid comments. We haven't even done that.

As a member of the opposition, perhaps I'm offering far too much assistance to the government by moving this motion. Maybe I should just let the government go ahead, ram this bill through and then wallow in the mess that it creates, in the mistrust that the legislation nurtures and in the chaos that it will foster, if we're to understand the Task Force on Paralegal Regulation, by virtue of barring paralegals, for instance, from some areas like family law and solicitors' work. Again, I'm not going to suggest, for instance, that wills aren't a complex legal matter. I'm not venturing so far as to say, without thorough consideration, that paralegals should or shouldn't be able to prepare wills. My suggestion is that most lawyers shouldn't be preparing wills, because they don't have the very specialized expertise.

Again, I want to be perfectly fair. We've all heard the horror stories about bad paralegals, and there are bad paralegals out there. We've also heard some horror stories, more than a few, about bad lawyers. I'm not talking about the crooked ones—the people who steal, the lawyers who rip off their clients in an overt and criminal way. They seem to be dealt with quite well. I'm just talking about incompetent lawyers, or, more importantly, to be more fair, lawyers taking on work that they have no business taking on. I want to be fair here.

This is a regrettable situation, and I urge support for this. I can commit to participating in a subcommittee meeting at the earliest opportunity, and I can also commit to ensuring that this bill, by virtue of my role and voting

power on the subcommittee, is prioritized in terms of this committee's business.

1030

Mr. David Zimmer (Willowdale): As usual, there's a clear distinction between the NDP rhetoric on this topic and the actual facts, so here are the facts. The clerk of the committee can do the calculation, and we'll know what happened.

Initially, the government decided to set aside four days for these hearings. At the behest of the opposition parties, we extended those hearings for a further seven days, for a total of 11 days. The committee sat on those 11 days from 9 a.m. to 5 p.m., with an hour off for lunch at noon. That's six hours. There were 20-minute or 30-minute slots for presenters. By my calculation, with six hours a day, even at 30-minute slots that's 132 slots. It's more when you take into account that many of those slots were 20-minute slots. We lost half a day for the Chudleigh motion, but we more than made up for that because of cancellations that we were able to fit in.

The government has set aside more than reasonable time for public hearings. I'm advised that virtually everyone who made a request to be reasonably accommodated has in fact been reasonably accommodated.

So the facts of the matter are: 11 days of hearings, six hours a day, an hour off for lunch, at least 132 slots. Everybody has been accommodated. Those are the facts. It's time to get on with clause-by-clause on this.

Mr. Kormos: I have the highest regard for Mr. Zimmer. I understand that he's the parliamentary assistant; it's his job to respond to the types of things I just said. But those comments betray the arrogance of this government.

The government had decided there were going to be four days of public hearings. Oh, they obliged the opposition by extending them three days. We don't have public hearings—well, maybe we do. Are these Soviet-style show trials where you have a token hearing and say, "Oh, well, that's the hearing"?

I don't care what the numbers are. This isn't a basketball game; it's about addressing the issues and addressing the concerns that were raised—legitimate, bona fide concerns. You'll remember Mr. Colangelo, the litigation lawyer—a very competent presentation. He talked about how, when you're talking to a judge about a quantum for a settlement for a personal injury case, you've got to prevail upon the judge to understand that this is the only kick at the can that we get to make it right. Well, these committee hearings are very much like that. This is the only kick at the can.

For Mr. Zimmer to somehow suggest that I said anything other than things that were accurate is not particularly impressive. I made it very clear that the opposition parties, in subcommittee and through the House leaders, agreed to make every effort to accommodate this bill prior to the House resuming sitting—I made that very clear. I also made it very clear, at least inferentially, that there were a large number of participants in these hearings. But notwithstanding the volume of participants,

some fundamental questions remain unanswered and some fundamental flaws remain in this bill and around this bill.

The law society was here twice. On day one, I gave the law society the opportunity and I very much wanted them to address the concerns, for instance, of mediators, as an illustration, as an example, because of the failure of this committee, and more importantly of the legislation, to talk about scope of practice. The response was, and I'm paraphrasing now, "Well, if mediators are doing things that constitute legal work, then maybe they should be regulated by the law society."

There was a second presentation by people speaking to the Task Force on Paralegal Regulation, and with all due respect to the very competent spokesperson on that day, it wasn't very gratifying, as I said earlier. It was an opportunity for the law society, through its spokesperson, to address the issues that had been raised over the course of the week before. They weren't addressed.

Quite frankly, this isn't just about paralegals. The issue around the Limitations Act: the conflict between the hard-core entrepreneurs who want to be able to contract out of the Limitations Act and those professionals, amongst others, and people in the construction industry, and in particular architects. You all read the letter from the architects that we just received. Remember, the Limitations Act was very important to architects, wasn't it, Mr. Runciman?

Mr. Robert W. Runciman (Leeds-Grenville): That's right.

Mr. Kormos: Critical. There's a real conflict there in interest which hasn't been resolved by this committee process.

When it comes to that oh, so modest proposal that mandates structured settlements—the CMPA. That's the insurance group of doctors. I hope I have the acronym right. They came here telling us how it was out of their concern for the injured party, because they were just so broken up that innocent victims, in this case of medical malpractice, might not be fairly treated by the court.

There was also some reference to the economy that we heard from at least one litigator.

Then we heard from Mr. Kolody. Remember him: a young man, father of an innocent victim? He couldn't talk about the litigation because it's literally before the courts. He was very, very discreet and fair, I put to you, in how he addressed that issue.

I'm not sure that there's a single member of this committee who is yet satisfied that they've had all the answers to all the potential questions about the rationale for that amendment. I'm not sure of that. This has been "Trust me" from the get-go. I'm sure that's what Henry VIII told Anne Boleyn, and it just doesn't cut it. It's not a matter of "Trust me"; it's a matter of being able to demonstrate that these are legitimate amendments that address real concerns and that help more than they hurt.

The Limitations Act amendment: I'm not sure it helps more than it hurts. The amendment regarding structured settlements—oh, and the misrepresentation, the outright

misrepresentation; the suggestion that Judge Osborne was clear in his call for mandatory structured settlements, when legislative research pulled that notorious Osborne report from 1987, and I remember it oh, so well, because of course that was one of the tools during the insurance wars. Remember those, Mr. Runciman, when the Liberals introduced no-fault insurance? That was a real winner.

That's the very same Osborne report they used at length. The fact is that I read that section where Osborne talks about structured settlements, and he didn't say what the CMPA said he said, nor did the other judicial sources say what they said they said. The justices of the peace: one kick at the can. Other than young Paul Hong, with a very capable piece of published material, we had precious little debate around it.

Paul Hong raised the issued of lay bench versus non-lay bench. We know where Mr. Runciman stands and that's okay; that's good. Now, mind you, he's never had to appear in front of those lay magistrates as an accused. He might have a different perspective.

1040

Notwithstanding that, there's a legitimate debate there. It was never engaged in. We're talking there specifically about, for instance, the minimum standards to be appointed a justice of the peace—the fundamental dilemma of adequacy of numbers of JPs. Mr. Runciman, we have part-time JPs who are being grandparented—I read the amendments; if the amendment passes, of course—Mr. Runciman, again, advocates per diem JPs, or "piecework JPs" is perhaps more accurate. One of the reasons, of course, they were abolished by that government was that there was a sense that police would go shopping for JPs and they would find a JP who would sign anything that you put in front of him or her. Whether that was fair or not is not the point; that was the rationale. There's a debate about that. There's an argument to be made. I accept that. But we never heard from people who would help us address that particular issue—nothing at all about the sections that will, for instance, allow for the destruction of evidence that has been tendered at a trial, rather than ensuring its preservation.

I know that the committee for the wrongly convicted spoke to that in a letter, a piece of correspondence, many months ago now. How many more cases do we have to see of people being freed from unjust prison sentences as a result of capable lawyers being able to access evidence that has been kept in storage before we realize that that sort of provision is totally inappropriate? Mr. Zimmer, I hear you: Your numbers are bang-on.

I hope there isn't a similar arrogance that permeates if my motion is unsuccessful. We should call the question quickly, before Mr. Duguid gets back, but I won't. If my motion is unsuccessful, I think we've made a serious error.

I'm as eager as anybody to see legislation pass. I was the one who was pulling on Mr. Bryant's coat sleeves last spring, and so was Bob Runciman, saying, "Introduce the bill, introduce the bill, introduce the bill." That was over a year and a half ago now. You remember that, Mr.

Runciman? On almost a daily basis: "Bring the bill forward. Let's get going." And he waits and waits and waits, and not only waits to introduce the bill, but then waits to call it—lingers. It's like a vagrant on the legislative calendar. Now, all of a sudden, seven days—is that the number, Mr. Zimmer? Seven days?

Mr. Zimmer: Eleven; 132 slots.

Mr. Kormos: Eleven; 132 submitters. I don't care if we need 200 submitters, I don't care if we need 300 submitters to be able to address the issue, but we've got to have enough submitters so that we have information that allows us to deal with this in an appropriate way. We haven't had those submissions. We haven't heard from members of the Family Court bench, the provincial offences bench. We haven't heard from justices of the peace. We haven't heard from anybody from the justice of the peace regulatory regime, the one that oversees JPs' work now. We just haven't heard from so many sources.

So there we go. I don't want to belabour the issue. I hope I've made my point. If I've not been clear enough in my argument, I apologize.

Mrs. Christine Elliott (Whitby-Ajax): I support Mr. Kormos's motion for deferral of the clause-by-clause consideration of this bill to allow for further submissions. Though he has set it out very ably and very completely, I'd like to indicate my reasons for agreeing with it.

First of all, although we have heard from 132 presenters, there are several major areas in which I think we do need further information before we can make a final determination with respect to this bill. One is in the area of justices of the peace. I would completely agree that we simply don't have enough information before us yet with respect to the appointments process, how they should be appointed and so on. We are in great need of more justices of the peace in this province, but we need to make sure that we make the right kinds of appointments so that they're going to be able to do the work that they need to be doing in the justice system.

Secondly, with respect to the issue of structured settlements for medical malpractice cases, I would agree that we've heard some information from the CMPA with respect to the need for structured settlements in these types of cases, but in my view, we don't have enough information to determine whether that's the case or not. We did hear from Mr. Colangelo and from Mr. Kolody, who made very significant arguments about why it was not a good idea, but I think we need more information in order to be able to make that determination.

Finally, and perhaps most significantly, with respect to the issue of paralegal regulation, both Dr. Ianni's report and Mr. Justice Cory's report have made some significant observations with respect to several areas. First of all, who should be regulating paralegals? Particularly Mr. Justice Cory indicated that, in his view, the law society was not the appropriate body to be regulating paralegals.

With respect to the issue of paralegal work, again, Mr. Justice Cory felt that it was important to be able to set out what types of work paralegals should be doing, and he did so very ably in his report, yet this legislation, when it

comes before us, doesn't seem to have taken that into account. In fact, it flies in the face of Mr. Justice Cory's recommendations, and I think it would be important to have his input in this area, since he studied it so exhaustively and so eminently.

For those reasons, I support Mr. Kormos's motion.

Mr. Runciman: I guess this is another fine mess that Mr. Bryant has gotten the government into. I think that's a fair conclusion to reach. I'm going to be supporting the motion as well. I share the concerns of my colleague and Mr. Kormos about the lack of representation to the committee, but I'm not optimistic that delaying or deferring clause-by-clause consideration is going to remedy that, because I have serious questions about why organizations and individuals did not appear. You could say, "Well, why wasn't Justice Ebbs asked to be here?" as the justice who's responsible for JPs in the province, because this is a very serious issue, as we know.

I raised this issue last week, Mr. Chair, you'll remember. We had a gentleman who was a former chief of police and an honorary member of the Canadian chiefs of police. I raised the issue of the failure of the Ontario Association of Chiefs of Police to appear before us to talk about some elements of this legislation that clearly they have concerns about and issues surrounding why they were not appearing. He took the opportunity to respond. I didn't expect him to. He took the opportunity to also express his alarm, I think it's fair to say, with the fact that they didn't take this opportunity.

One has to wonder—and I raised the issue of intimidation, Mr. Speaker—Mr. Chair. I think it's fair to raise that because of an incident where I know that a very non-political organization in this city was sponsoring a meeting where Premier McGuinty was the guest speaker, and the chief of staff in the Premier's office phoned up and attempted to intimidate the MC in saying that Mr. McGuinty had to be—there were no ands, ifs or buts—introduced as "Mr. Ontario." Fortunately, the MC of that meeting was a strong enough individual to say, "Okay. I'll introduce him that way, and I'll say 'on the orders and instructions of the chief of staff of the Premier of the province of Ontario.'"

So how much of that sort of thing goes on should be a concern to all of us. We've certainly seen, on a regular basis, the Minister of Health attempting to intimidate people in the medical profession, either calling them "terrorists" or "threats to the health care system in this country," that sort of thing, Mr. Speaker—Mr. Chair.

1050

I'm not optimistic, for whatever reasons, that even if we defer to hear these folks—because of the approach of this government in terms of so many areas—they're going to volunteer to come forward. But there is another reason I think we should talk about in terms of deferral, and I'm prepared to look at simply deferring this until the House comes back next week and then begin our clause-by-clause. It may take some time, but it's quite realistic to expect reporting back to the House in time to at least begin third reading.

My concern is the fact that we entered into, as Mr. Zimmer indicated, an understanding as the House leaders—and both Mr. Kormos and I represent our parties as House leaders—that we would make every effort to report this bill back to the House when we resume sitting next week or shortly thereafter. The problem arises—and certainly, those understandings, from our perspective anyway, are never going to be reached in the future based on this legislation.

We saw it last week with the water bill—I forget the number of the bill—where the government comes in with over 100 amendments. We have over 100 amendments dropped on our doorsteps. Most of us were on caucus retreats, in opposition we have limited research capability, and we're expected, the day we return from the plowing match and the caucus retreats, to realistically deal with some substantive amendments and others that are more technical in nature, but not having a realistic opportunity to really review those amendments and to have an understanding of potential impacts.

We can say, "Well, the government's approach to this is they have three members sitting here who did not attend any of the hearings." That's pretty clearly an indication that this is a pro forma process, that we're simply going to put our hands up when the government amendments come forward—end of story. From our side of this meeting room, we can't approach it on that basis; we have to have the opportunity to understand the implications of these amendments. I think that if we move ahead today, it's going to be very difficult to get through this in the allotted time, because, as I said, we haven't had the opportunity to take a look at all the implications of these over 100 amendments. To try to deal with them in a meaningful way in the allotted time is an insult to all of the good people who took time out of their lives to appear before us, express their concerns and put their views on the record.

So, Mr. Speaker—Mr. Chair—I'm going to have you elevated to that lofty office before the day is out—we on this side of the room obviously are going to vote for this. I would perhaps propose a friendly amendment that we defer sittings until the resumption of the House next week. Essentially, as I explained, my view on that is to give the opposition more opportunity to review the amendments and to prepare for extensive discussion of same.

At the same time, I don't rule out what Mr. Kormos is saying. If there are other witnesses whom we can encourage to appear, perhaps on the paralegal side—but we did hear a substantive number of individuals testify with respect to that element of the legislation. I'm concerned that we did not hear from very many people. You mentioned the one law student, who was the only individual who appeared before us with respect to these very substantive changes being suggested to the JP side of things and to the courts' administration.

I said at the outset that this is another fine mess that the Attorney General has gotten the government into. Perhaps they may not consider it fair, but I think it's fair

in the sense that both Mr. Kormos and I have indicated that our parties support regulation of paralegals. We've indicated that for some time, and we did encourage the Attorney General to bring forth a piece of legislation without getting specific about the regulatory body or other specifics in terms of what we felt was appropriate. I guess there was an assumption based on Justice Cory's report, the Ianni report, that that's the direction the government would be moving towards in terms of self-regulation.

Setting that aside, for whatever reasons—and I guess only Mr. Bryant can respond to this—he felt that he should throw all these other critically important issues into this bill. It certainly upset us at the time, and it has continued to cause serious concern. It's regrettable that we couldn't have dealt with both these issues on a separate basis; perhaps both would have received more serious and timely consideration if he'd undertaken that path rather than the one he has undertaken. Thank you.

The Chair: Mr. Runciman, can I get you to clarify the amendment?

Mr. Runciman: The original motion is in front of me, isn't it? I have a copy of it here somewhere. I don't think I'd be in conflict. Mr. Kormos's motion is deferring it until the committee can hear further submissions from members of the public. To amend it, "continue clause-by-clause consideration no earlier than the first committee day of sitting following the resumption of the legislative session."

The Chair: Are we ready to vote on the amendment?

Mr. Kormos: A recorded vote, please. I request a two-minute recess pursuant to the standing order.

The Chair: The committee is recessed for two minutes.

The committee recessed from 1058 to 1101.

The Chair: Mr. Kormos has asked for a recorded vote on Mr. Runciman's amendment to Mr. Kormos's motion.

Ayes

Elliott, Kormos, Runciman.

Nays

McNeely, Van Bommel, Zimmer.

The Chair: It's a tied vote.

Mr. Brad Duguid (Scarborough Centre): We can't hear you, Vic. Sorry.

The Chair: Maybe if you weren't talking, you'd be able to hear.

I vote against the amendment to the motion. The amendment to the motion is defeated.

Now we're going to consider Mr. Kormos's motion.

Mr. Kormos: A recorded vote, please. I request a three-minute recess pursuant to the standing orders—three minutes, this time.

The Chair: This committee is recessed for three minutes.

The committee recessed from 1103 to 1106.

The Chair: We're voting on Mr. Kormos's motion. Mr. Kormos has asked for a recorded vote.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Jeffrey, McNeely, Van Bommel, Zimmer.

The Chair: That motion is defeated.

We're going to move on to section 1. The first motion is a government motion. Do we have unanimous consent to stand down the bill and move to the schedule?

Mr. Kormos: Agreed.

The Chair: All agreed?

Mr. Zimmer: Hold it. I want a five-minute adjournment.

Mr. Kormos: Wait a minute: pursuant to what standing order? If there's no agreement, then let's start with section 1. What's going on? I give agreement to unanimous consent to help expedite the government's business and the parliamentary assistant wants to block it? Give your head a shake.

Clerk Pro Tem (Mr. Trevor Day): The Chair was looking to stand down—the bill itself, I believe, contains approximately three—

Mr. Kormos: Chair, on a point of order: Please, the clerk is here to give counsel to the Chair and other members of the committee; the clerk is not here as a participant in this committee hearing. The Chair sought unanimous consent. You didn't get unanimous consent, so that then takes us to section 1. Are we going to do this or aren't we?

The Chair: We have no amendments to section 1. Shall section—

Mr. Kormos: No. "Is there debate?"

The Chair: Is there any debate?

Mr. Kormos: Well, now there is.

Mr. Duguid: On a point of order, Mr. Chair: Can we get clarification on the motion from the clerk as to what the motion means?

Mr. Kormos: There is no motion.

Mr. Duguid: There is a motion by the Chair.

The Chair: We're on section 1 of the bill.

Mr. Kormos: The Chair can't make motions, for Pete's sake.

The Chair: Is there any debate on section 1 of the bill?

Mr. Kormos: Yes, there is.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, Chair. Thank you very much. It is unfortunate that the government would not join the opposition parties in agreeing to hold down sections 1, 2 and 3 until we've dealt with the respective schedules—A etc., etc. In view of that, I am indicating that I will not be supporting section 1 of the bill. We do not feel that this bill is ready to be dealt with by com-

mittee. I suggest to you that there will be a recorded vote on this matter.

1110

The Chair: Further debate on section 1? Mr. Kormos has requested a recorded vote.

Ayes

Duguid, Jeffrey, McNeely, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: Section 1 carries.

Any debate on section 2? Shall section 2 carry? Carried.

Any debate on section 3?

Mr. Kormos: Section 3, of course, is what entitles this act the Access to Justice Act. I was here, of course, through the two governments that held power in Ontario from 1995 to 2003. I remember our outrage—New Democrats' outrage—at the oxymoronic and fraudulent titles given to bills during that era—they were. It was embarrassing, and it quickly became pretty transparent that the spin efforts on the part of that government were pretty futile.

What do we have here? We have a bill called the Access to Justice Act when it is anything but. Is it justice for paralegals? They would say no. Is it justice for poor, low-income and even middle-income Ontarians who simply cannot afford the inevitable legal fees when it comes to litigation in civil courts and family court and, yes, even in provincial offences and criminal courts?

Is it fair, does it assist in access to justice, for a single mom who has fled an abusive household, inevitably after if not the first beating then the fourth, fifth, sixth or seventh, who, even if she gets a legal aid certificate, can't find a competent or experienced family law lawyer to act for her because the cap on the number of hours allowed under a family law legal aid certificate is so low that no competent lawyer will take the case? The ones I'm aware of will say, "Well, it's going to be pro bono," or "I simply can't fit you in." I understand that. Lawyers have overhead. Unless they're independently wealthy in their own right—I practised law many years ago and always used to fantasize, and I still do, about winning a 6/49 or something because then I wouldn't have to worry about clients being able to pay. I still haven't won a 6/49.

We have a real crisis around our family courts and representation in them. Not only as we heard, but as common sense dictates to us, unrepresented litigants in Family Court or virtually any other forum slow down the judicial process, create grief for judges and court clerks and other court staff who are called upon to provide assistance, and lead to pressure on appellate courts, because judges sometimes are not given all of the facts because an unrepresented litigant appears before them

who simply isn't aware of the process and can't muster up all of the facts.

Is this bill about access to justice for single moms who are getting beaten on a regular basis, who are at risk of losing their lives—because we know what the course of events is—and flee violent households? Does it provide access to justice for them? I say not. Does it provide access to justice for people involved in provincial offences matters? Once again, I say not.

The amendments to the provisions which refine or alter the process whereby JPs would be appointed have nothing to say about the number of JPs that will be appointed once the bill is passed. Mr. Bryant has been downright negligent in addressing the issue of shortages of justices of the peace. He actually has told forums in this province that he can't appoint justices of the peace until Bill 14 passes—what horse spit, unadulterated. Talk about an inappropriate and inaccurate representation of the facts. We know it's not true because he appointed six JPs just a month ago.

There is nothing about Bill 14 not having been passed that prevents the Attorney General from unilaterally raising the bar for the sorts of people who are being appointed justices of the peace. While I have known many good justices of the peace and watched many very, very skilled lay JPs work—people like Gabe Tisi, people like Tony Argentino, people like Morley Kitchen—I've also seen some of the most incredibly incompetent and incapable people performing or attempting or purporting to perform the role of justice of the peace—inevitably political hacks.

I'm not even convinced that the bill will protect us from political patronage when it comes to appointments of justices of the peace, because we know the process: A short list is created during the screening process, and at the end of the day, it's still the political bosses who determine who gets the appointment. I very, very specifically reject the proposition that this should be called the Access to Justice Act.

Mr. Kolody, in speaking to us, while not speaking directly about his son, an innocent victim—again, we can't predict the outcome of the litigation that I'm told is imminent—certainly doesn't think the bill provides justice for innocent victims. Neither did at least one of the advocates and litigators for personal injury victims of medical malpractice, because it's only applicable to medical malpractice—nor did they.

1120

Do the Limitations Act amendments, as they stand now, provide access to justice for victims of unscrupulous, unethical and incompetent financial advisers and brokerage houses? You know the issue, Chair. We had two very capable presentations in that regard. James Daw, the columnist for the Toronto Star, was referenced. I'll be speaking more specifically about the comments of Mr. Daw and those submitters when we get to that schedule in the bill, if we get that far. Does this bill provide access to justice? Those are inevitably senior citizens, those are our folks and, if we're lucky enough to

still have them with us, our grandfolds, who are getting ripped off. They are losing lifetime savings through the failure of financial advisers, either through incompetence or greed on their part, to assist them in a competent way to invest their savings or, for that matter, by stockbrokers who are churning the investment accounts.

I mentioned this during the hearings, and I'm going to say it again: Every time I get a senior coming into my constituency office and she or he shows me their annual statement from a broker, when they're 80 years old, showing a half a dozen trades on a monthly basis, that's a scam. Parade an 80-year-old around, other than very wealthy people, who should be playing the market—for brokers who are doing that, that's the red flag for a broker who's churning. It's like the guy taking the rake at the poker game. At the end of the day, the guy who runs the game in the basement is going to have everybody's money because he takes a rake out of every pot. Eventually, no player's going to win anything, because there's no money left. So does this bill provide access to justice for them? I say not.

Does this bill provide access to justice for the wrongly convicted who, 15 or 20 years after the fact, if they're lucky enough to have the skilled counsel of people like Jim Lockyer—he's been a brilliant leader in the struggle for justice for the unjustly convicted. If court records and evidence aren't available to them, is there going to be access to justice for the wrongly convicted? No way.

The proposed amendments to the Provincial Offences Act and the potential for giving telephone evidence: The illustration was given—it was rather folksy—of the police officer in an evening POA court who's sitting at home, watching the hockey game. He was very generously put with a coffee at his side. I don't know; I suppose it's the rare teetotaler who's going to be drinking coffee watching a hockey game. The phone rings and he's allowed to give his prosecutorial evidence by telephone before a JP, because it's only a provincial offences matter. Is that justice for the accused in that instance, the innocent accused? I think not.

I suppose I could go on, but I do not want to belabour the point. I will be opposing section 3 and I will be asking for a recorded vote. This is a mockery, to call this bill "access to justice." Call it anything you want, but don't call it "access to justice," by any stretch of the imagination.

Mr. Runciman: I share many of the concerns that Mr. Kormos has expressed in terms of the title of this legislation, but I guess we're getting comfortable—not comfortable, but certainly used to the fact that the current government tends to mislabel legislation, if you will. I know Mr. Kormos talked about arrogance, but I think it's more a reflection of their view of the public and the folks who observe, not on a regular basis, the goings-on of the provincial government and the fact that they can very easily, in their view, pull the wool over the eyes of the great unwashed, the public at large. We certainly saw that in the last provincial election: 231 election promises to get a vote, and how many have been broken to date? I

think at least 50. I think this is another reflection of that approach to the public of Ontario.

I have very serious concerns about this whole access issue, much of it around the limitations, the scope of practice concerns with respect to paralegals. I know one or more of the witnesses talked about Family Court. Mr. Kormos has talked about Family Court at length, that the number of individuals appearing unrepresented in Family Court today should be a concern to all of us. I don't see where this legislation, or the regulation of paralegals, is going to in any way, shape or form effectively address access to justice for so many people who are facing those situations and simply cannot afford to retain counsel but don't qualify for legal aid assistance, for example, who are unable to meet those requirements. I think that's one element of it.

The Limitations Act: We heard from seniors. I think an argument can be made here in terms of access to justice for them in terms of the changes to the Limitations Act and the inability of both parties in a situation like that to agree on stopping the clock, if you will. The only way under the legislation now—as I said, we haven't had enough time to peruse all the amendments. Hopefully, the government is addressing this so that if both parties agree to stopping the clock, that will happen. But in the legislation that's before us, that wasn't the case, and that's a significant concern especially of seniors, who are going to be impacted by this. So access to justice, from their perspective, is not being improved. In fact, it's being impeded.

The JP appointment process: When you look at the backlogs in the courts and the number of POA charges being dropped—we do not see any initiative being undertaken in this legislation that's going to improve that situation or improve access to justice for so many Ontarians.

Victims of crime: We did not hear from many victims' organizations during this process, but we frequently read or hear or see, through various media outlets, very strong concern about bail decisions being made by justices of the peace, especially in terms of individuals who've been charged with very serious crimes, gun crimes, and the frustration of policing organizations when they conduct an investigation, arrest someone for a violent crime, and then two days later they see that individual out on the streets, back in the community, engaged in activities that are not beneficial to the community at large. In terms of access to justice, we have to look at the bigger picture here. I think it's very much a misnomer. This is not in any way, shape or form improving access to justice.

The accountability of the courts: If you take a look at this legislation in terms of accountability of the courts, this is really not going to improve the situation. In fact, it tends to increase bureaucracies, in my view, in some of the initiatives that are being undertaken here, making it more of a red tape process, less of a process that builds accountability into the system where the judges, the JPs and the court administrators have to account for what is happening in those jurisdictions that they have responsibility for.

I will be joining with Mr. Kormos and my colleague Ms. Elliott to vote against this section of the act.

1130

Mr. Kormos: Is there access to justice for the parties who appeared before this committee when three of the people voting on the government side on these amendments weren't present for a single minute of any of the committee proceedings? The House leader's staff can report back that I am ticked off royally that the government would treat this bill so cavalierly and, more importantly, treat the committee process so cavalierly that we can't even have a majority of the government ranks being people who sat through the hearings.

Ms. Van Bommel worked incredibly hard during the committee hearings. If she was absent, it was only for a few minutes, like some of us are from time to time, to attend to a phone call or a phone message. Ms. Van Bommel engaged participants in dialogue, whether they supported the government or not, fairly, intelligently and certainly thoughtfully. I'm grateful that she's here. I'm not sure she's necessarily going to vote with her conscience or with her heart or with her intellect, but I understand. I understand that she's a member of a government caucus.

But three people here were not here for one minute of the submissions. The parliamentary assistant was absent for three days. The government House leader should know that this committee member—me—is not a happy camper right now. This is an insult to the people who appeared in front of this committee and it's an insult to the thousands and thousands of others across the province who expect this committee—look, they may not agree with the end result; they knew that coming here. But they expect for there at least to be a thoughtful, fair and thorough consideration of the comments on the bill.

If I haven't already indicated, I'll be asking for a recorded vote when you call a vote on this section 3, Chair. Thank you.

The Chair: Shall section 3 carry?

Ayes

Duguid, Jeffrey, McNeely, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: Section 3 carries.

We're going to move to schedule A.

Mr. Kormos: We were waiting for that, Chair. Thank you.

The Chair: Schedule A, section 1. Government motion.

Mr. Zimmer: I move that subsection 1(1) of schedule A to the bill be struck out.

The Chair: Any debate?

Mr. Kormos: We can speed this up. I presume that there is a cheat sheet, a Coles Notes, if you will, accom-

panying the amendments. If there isn't, then there isn't, but there usually is for at least the parliamentary assistant in the event that he or she is called upon to respond to questions about the amendments.

Some of these amendments, one can infer, are simply cleanup of what I will generously call typographical errors. I'll refer to them probably more harshly as the day proceeds.

If we could have a copy of the cheat sheet, of the Coles Notes, of the script that PAs get, it would certainly speed things up.

Having said that, I'm in a position now to have to ask why. Not about the cheat sheets; we know why the ministry prepares the cheat sheets. Why this amendment?

Mr. Zimmer: I was just about to offer—

Mr. Kormos: No, I didn't jump in; I simply wasn't finished.

Mr. Zimmer: It's a housekeeping matter. We don't need a definition of "chief administrator"—that's what this section deals with—because the creation of the position is deleted from the bill itself.

Mr. Kormos: Okay, so this is—

Mr. Zimmer: I'll tell you what I will do in the interests of speeding up. As I come to my amendments, if, in my view—and I'll make the decision fairly and objectively—it's a housekeeping matter, I'll flag it as that, and we can go from there. If you think it's not, I'll give you more detail.

Mr. Kormos: Chair, I appreciate the generous offer on the part of Mr. Zimmer, but Mr. Zimmer, I've been around here 18 years. Please.

Mr. Zimmer: It's similar to some of your fancy skating, okay? I can skate as fancy as you can.

Mr. Kormos: Mr. Zimmer, please. That's not going to save you any time. All it will do is cause suspicion. It would be far better—if you shared the cheat sheet, we could simply move ahead. But I hear you.

Are you suggesting that section 74, then, is going to be addressed such that there won't be any need for the definition of "chief administrator" because there won't be a chief administrator of the court service appointed under section 74?

Mr. Zimmer: Yes.

Mr. Kormos: Thank you.

The Chair: Any further debate? All those in favour? Opposed? That's carried.

Government motion number 2. Mr. Zimmer.

Mr. Zimmer: This is a housekeeping motion.

I move that subsection 1(2) of schedule A to the bill be amended by striking out "79.3" and substituting "79.1."

The amendment merely reflects a renumbering as a result of the proposed revisions to the court administration amendment. It's just renumbering the sections.

The Chair: Any debate?

Mr. Kormos: I'm going to ask again, as in the previous one: If the government has decided now to not have a chief administrator of the court service appointed under section 74, what changed its mind similarly such that the

amendments that are being made require the renumbering of this? What happened?

Mr. Zimmer: Well, it's an enumeration issue. It's a renumbering.

The Chair: Any further debate? All those in favour? Opposed? It's carried.

Shall section A, as—Mr. Kormos?

Mr. Kormos: I trust you're going to ask for debate.

The Chair: Is there any debate on section A? No debate. Shall schedule A, as amended, carry?

Mr. Kormos: No, no, no, no, no, no.

The Chair: Shall schedule A, section 1, as amended, carry? All those in favour? Opposed? That's carried.

Schedule A, section 2: any debate?

Mr. Kormos: I understand this one. This one is self-evident, isn't it? And I'm going to be supporting it.

The Chair: Shall schedule A, section 2, carry? All those in favour? Opposed? That's carried.

Schedule A, section 3: Is there any debate? Mr. Kormos?

Mr. Kormos: No, thank you.

The Chair: Shall schedule A, section 3, carry? All those in favour? Opposed? That's carried.

Motion number 3 is a PC motion.

1140

Mrs. Elliott: I move that schedule A to the bill be amended by adding the following sections:

"3.1 The act is amended by adding the following section:

"Paralegals

"16.1 Section 21.8.1 applies, with necessary modifications, when the Superior Court of Justice is dealing with a proceeding referred to in the schedule to section 21.8."

"3.2 The act is amended by adding the following section:

"Paralegals

"21.8.1 A person who is authorized to provide legal services in Ontario is entitled to appear in the Family Court."

"3.3 The act is amended by adding the following section:

"Paralegals

"39.1 Section 21.8.1 applies, with necessary modifications, when the Ontario Court of Justice is dealing with a proceeding referred to in the schedule to section 21.8."

The Chair: Any debate?

Mr. Runciman: I can speak to, certainly, the family court issue. I don't think anyone disagrees that any individual appearing in Family Court will have to meet certain requirements. I think that's the intent, to ensure that that ability is there if someone meets the educational requirements and other requirements, that this is an important element in terms of access to justice.

As I mentioned earlier in the discussion, we were advised during the hearings process that the number of people appearing unrepresented is growing and is fairly significant. I think we have to ensure that when we're talking about improving access, this is an option that is

available to individuals in our society who may not be able to afford the costs associated with the retention of legal counsel.

Mr. Kormos: I should perhaps request of Mr. Runciman for clarity. I'm assuming that his intent—when he says, “authorized to provide legal services ... is entitled to appear in the Family Court,” it would implicitly mean, “authorized to provide legal services in Family Court in the event that there is a multi-tiered licensing process where different paralegals have different areas where they're entitled to work.”

The Chair: Any further debate? Seeing none, all those in favour? Opposed? That motion is lost.

Schedule A, section 4. Any debate? Shall schedule A, section 4, carry? All those in favour? Opposed? It's carried.

Schedule A, section 5. Government motion number 4.

Mr. Zimmer: I move that section 5 of schedule A to the bill be amended by adding the following subsection:

“(0.1) Subsection 42(2) of the act is repealed and the following substituted:

“Qualification

“(2) No person shall be appointed as a provincial judge unless he or she,

“(a) has been a member of the bar of one of the provinces or territories of Canada for at least 10 years; or

“(b) has, for an aggregate of at least 10 years,

“(i) been a member of a bar mentioned in clause (a), and

“(ii) after becoming a member of such a bar, exercised powers and performed duties of a judicial nature on a full-time basis in respect to a position held under a law of Canada or of one of its provinces or territories.”

Mr. Kormos: On a point of order, Chair: I'm looking very carefully at Bill 14. This may be an overly fine point, but Bill 14 in section 5 amends 42(3); it basically amends 42(4); it amends 42(6). Where does it amend 42(2)? As I say, I appreciate that this might be an overly fine point. By virtue of amending specific subsections of a section, is the section opened up? If the bill said, “Section 42 of the act is repealed”—all of it, subsections (1), (2), (3), (4), (5)—“and the following substituted,” then you've opened up section 42 in its entirety such that it can be amended, and this motion would be very much in order. Quite frankly, if we're going to have some discussion about it, I think it's a fine motion, but I'm concerned about its orderliness.

Obviously, the ruling you make will either open doors for me in the future or it will close doors when I try to get in the back door where I normally wouldn't be able to get in the front door. So I'm asking you to rule on whether this is in order, in view of the fact that subsection 42(2) is not addressed in Bill 14, nor is section 42 addressed in its entirety. The bill is very careful to speak only about respective subsections of 42. I leave it in your hands. You may want to consult precedent.

The Chair: Mr. Kormos, I believe that is in order because all of section 42 is open and subsection 42(2) is affected.

Mr. Kormos: Okay, thank you kindly.

The Chair: Okay. Any further debate?

Mr. Kormos: Yes, of course. One of the problems with amendments like this is that, as compared to the bill, well, we could check them against the original act, because of the short time frame—can you help us, parliamentary assistant, in terms of, you're repealing subsection 42(2), you're replacing it with this? Sub (a) is consistent with the existing regime. Where do we get the changes here?

Interjection.

Mr. Kormos: I'm finished with my question. I said I liked your amendment.

Mr. Zimmer: Well, when you've finished your remarks, then I'll make my remarks.

Mr. Kormos: Yes, that's my question. Go ahead.

Mr. Zimmer: Look, the effect of the change is that the amendment is going to permit the appointment of candidates who have performed duties of a judicial nature following their call to the bar. For instance, somebody might have worked as a justice of the peace, not as a lawyer, or he or she might have worked as a member of an administrative tribunal and not necessarily maintained their membership in the bar association while they were sitting on that tribunal. All that we're saying is that if they've got that kind of experience, they're qualified.

Mr. Kormos: But it remains a prerequisite because, in paragraph (b) subparagraph (i), there has to have been a call to the bar at some point, somewhere. Is that accurate?

Mr. Zimmer: Let me put it this way: Section 42(2) refers to the use of the word “judge.” That's just expanded now to work of a judicial nature.

Mr. Kormos: I appreciate that, but I want to make it very clear. For instance, a hypothetical: Somebody is not called to the bar, but then has strong enough political/Liberal ties to this government that they get appointed to a tribunal. Without ever having been called to the bar, they are performing for 10 years in a judicial/quasi-judicial nature. Would that person fit the criteria here, in view of the word “and”?

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Mr. Zimmer: That's what I said in my earlier comments.

Mr. Kormos: Chair, I've got a problem. I appreciate that I come from small-town Ontario, and maybe we speak differently there. Is that an unfair question I put to you? I'd like some clarification. We're voting on this. I'd like the record to be clear in that regard. I'm not getting a response. Is that fair?

Mr. Zimmer: Please. We can start utilizing some standing orders here very, very effectively—not from your perspective, but from mine. I'm trying to engage in some reasonable questions. You're the one who presented the amendment. You address a section of the act that wasn't addressed prior in the bill. It's not an unfair question. You won't share the background material. I'm trying to get clarity and you're coming back with these snide sorts of responses.

Whatever you may think of me is certainly irrelevant. Whatever you think of me, you can express to the press, you can express in the chamber, you can express wherever you happen to hang your hat after you leave here, but I'm trying to ask a legitimate question, and snide answers are not particularly helpful and will only serve—the House leader's staff should know that this is not being particularly helpful.

Mr. Zimmer: I'm going to ask Mr. Gregory from the Attorney General's office to answer your very technical question. Mr. Gregory?

Mr. John Gregory: Thank you. Mr. Chairman—

The Chair: Sir, can you state your full name for the record?

Mr. Gregory: Yes. My name is John Gregory, general counsel with the policy division of the Ministry of the Attorney General.

The act now in subsection 42(2) and the act under the proposed amendment requires someone to be appointed a judge to be a member of the bar at some point in his career; he has to be called to the bar. In proposed 42(2)(b), they can be a member of the bar and that membership can then be suspended when they're appointed to a tribunal. So they may not be an active member of the bar for the full 10 years, but at some point, yes, they have to be a member of the bar.

Mr. Kormos: Bless you. Thank you very much. I appreciate that confirmation of what I suspected was—

The Chair: Thank you very much. Any further debate? Mr. Runciman.

Mr. Runciman: Just to put my views on the record again—I did this during the hearing process, and I won't take a long time—I think that there is room for restoration of a lay bench, perhaps in a limited capacity. If you go back to the days of the lay bench—and I know there were some problems with certain individuals, but they're not confined to lay representatives—I think it could be helpful. Obviously, the government is not receptive to this, and neither were past governments, for that matter, but it's my own view that it's worthy of consideration in the future if someone has an extensive background in the justice system and a range of experiences working with victims of crime, working in the criminal justice system—senior managers in the policing profession, as an example. A number of former chiefs, deputy chiefs, lead investigators were appointed to the bench in years gone by and served this province and the people of this province extremely well.

I simply want to put it on the record. I always find that the—and I don't want to tar everyone with the same brush, Mr. Chairman, but we saw it in this legislation, and I think the people can infer from some of the testimony we heard during the proceedings that the legal profession could be accused of feathering their own nest, protecting their own interests in so many elements. I think this is a case of folks perhaps perceived as looking down their nose at people who can perform in an admirable fashion and perhaps in some respects in a more

effective way than some folks who are currently occupying those lofty perches.

Hopefully, at some point, some government of the future will seriously consider reviewing this as an option that could really, I think, improve delivery of justice and access to justice in this province.

The Chair: Any further debate? All those in favour? That's carried.

Shall schedule A, section 5, as amended, carry? Carried.

Mr. Kormos: Chair, if I may propose, sections 6, 7 and 8 can be dealt with as a block, subject to any objections from the government.

The Chair: No objections? Shall sections 6, 7 and 8 carry? Carried.

Next is a government motion.

Mr. Zimmer: This is a housekeeping motion. I move that subsection 9(2) of schedule A to the bill be struck out.

The chief administrator deleted, the amendment to clause 65(2)(g) is no longer necessary.

The Chair: Any debate? All those in favour? Opposed? Carried.

Shall schedule A, section 9, as amended, carry? Carried.

Schedule A, section 10: any debate?

Mr. Kormos: I want to, as you know, speak very specifically to those provisions that deal with the preservation of records and evidence, a concern expressed by those advocates for the wrongly or unjustly convicted. I would like some assurance that the amendment in section 10 does not permit rule changes—because I think it does; if there is no assurance, then simply say so—that address the preservation or the lack of preservation of records or evidence. I don't know. And if it does, just say so.

Mr. Zimmer: I'm going to ask Mr. Gregory to respond to that very technical question.

Mr. Gregory: Section 10 allows the Attorney General to approve rules of the civil rules committee, which doesn't deal with evidence in criminal cases at all. In fact, the rules of civil procedure don't deal with preservation-of-evidence questions. Section 10 applies only to the civil rules committee, so evidence in criminal cases would not be covered by the civil rules.

Mr. Kormos: I read "civil rules committee," and once again I'm asking whether it is within the scope of the civil rules committee to make rules—I'm presuming it is—around the maintenance of records within the court system. If it isn't, again, just say so. I reference the advocacy for the unjustly convicted, because that's my starting point. I just want to know whether that would entail similar powers by this committee.

Mr. Gregory: Mr. Chairman, I'll consult with my colleague on what the content of the civil rules is. The question of Mr. Kormos is, essentially, is there anything in the rules of civil procedure at present dealing with the preservation of evidence? Frankly, I don't know that. I know that it deals with civil cases and not criminal cases, so the wrongfully convicted are not usually convicted in civil

court. Whether there's anything in the 600 rules that deals with it, frankly, I don't have at my fingertips, but I'll let you know in a moment.

Mr. Kormos: Chair, do I have to make myself any clearer? I referenced my concern about the preservation of records in criminal courts. I made that clear. I'm now asking whether it's within the scope of the civil rules committee to address the preservation of evidence and documents in the courts. I know it's within the civil context. I don't need snotty references to the fact that people aren't convicted in civil courts. And, damn it, if we're going to carry on like this, we're going to have some serious, serious problems before the day is over, never mind the week.

The Chair: Would it be okay with the committee if we adjourn for lunch at this point in time? All agreed?

Mr. Kormos: Thank you, Chair.

The Chair: We will be adjourning until 1 o'clock. Thank you very much.

The committee recessed from 1201 to 1306.

The Chair: Order. Before we recessed for lunch, we were debating schedule A, section 10. Any further debate?

Mr. Kormos: Schedule A, section 10. Yes, we were going to get some sense, hopefully—

The Chair: Mr. Kormos.

Mr. Kormos: Yes, thank you, Chair. You see, section 76—that's the various chief justices making rules dealing with documents and material. What I'm asking is, is there anything in the civil rules that deals with storing, maintaining, archiving court records, or is that just practise? To simplify the question.

Mr. Gregory: Mr. Chairman, I've had a chance to look at this question a little more over the lunch break. I think the answer is that the civil rules committee does not deal with this. There is a provision in the Courts of Justice Act that does deal with the disposal of documents, and that I think is the one that caught the attention of Mr. Kormos and some of the people who submitted to the committee. The amendment to that section is now part of a government motion under section 15, which we'll come to. The language of that particular section is being restored to what it is in the current Courts of Justice Act, so the concern that was raised by some people saying, "You're changing the records section" should disappear, because the result of the government amendments is that the record retention and destruction section of the Courts of Justice Act will not be changed from what it is today.

Mr. Kormos: Okay, that's helpful. Thank you.

The Chair: Thank you, Mr. Kormos. Any further debate?

Shall schedule A, section 10 carry? Carried.

Now we're on to—

Mr. Kormos: Just one moment, Chair. Let's take a look here. I propose that you might want to deal with sections 11 and 12 together.

The Chair: There's a government amendment to section 11, number 6.

Mr. Kormos: I'm sorry.

The Chair: Mr. Zimmer?

Mr. Zimmer: I just didn't understand the point, but let's continue in the order in which we were going. So the next one in my notes should be 11(1).

The Chair: That's fine, Mr. Zimmer.

Mr. Kormos: Subsection 11(2), your motion.

Mr. Zimmer: What happened to 11(1)?

Mr. Kormos: Well, we'll deal with that after we deal with your amendment. We're dealing with section 11 now. You want to amend section 11, right?

Mr. Zimmer: All right.

The Chair: Mr. Zimmer, government motion 6.

Mr. Zimmer: I move that subsection 11(2) of schedule A to the bill be struck out.

It's a housekeeping matter. "Chief administrator" is deleted; the amendment to clause 67(2)(j) is no longer necessary. Mr. Gregory can answer any technical questions.

The Chair: Any further debate? All those in favour? All those opposed? Carried.

Shall schedule A, section 11, as amended, carry? Carried.

Schedule A, section 12: Any debate?

Mr. Kormos: What's here that's not currently law?

Mr. Zimmer: Sorry, Mr. Kormos. I didn't hear you.

Mr. Kormos: What is here that isn't currently law? What substantial change does this make?

Mr. Zimmer: Mr. Gregory?

Mr. Gregory: Mr. Chairman, the substantial change being made to the sections by section 12 is that the rules being made by the Family Rules Committee are subject to the approval of the Attorney General and not to the Lieutenant Governor in Council. That basically is what section 12 does, as did section 10 with respect to the civil rules.

Mr. Kormos: Thank you.

The Chair: Any further debate?

Shall schedule A, section 12, carry? Carried.

Schedule A, section 13: government notice.

Mr. Kormos: Well, I don't know if there's going to be any debate on section 13 or not.

The Chair: Any debate?

Mr. Kormos: I trust the government's going to speak against it.

Mr. Zimmer: Call the vote.

The Chair: Shall—

Mr. Kormos: One moment. I think section 13 is a sound part of this bill and warrants careful consideration by this committee. I for one want to applaud the government in the instance of section 13 for its draftsmanship. Not that I should have to encourage government members to support their own amendment, but I encourage government members to vote for section 13.

The Chair: Further debate?

Shall—

Mr. Kormos: Recorded vote.

The Chair: Shall schedule A, section 13, carry?

Ayes

Kormos.

Nays

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

The Chair: That's lost.

Next, we have schedule A, section 14. Any debate?

Shall schedule A, section 14, carry? Carried.

Schedule A, section 15: PC motion 8.

Mrs. Elliott: I move that section 74 of the Courts of Justice Act, as set out in section 15 of schedule A to the bill, be amended by adding the following subsection:

"Same

"(10.1) Without limiting the generality of subsections (9) and (10), the annual report shall provide information, with respect to the fiscal year, about,

"(a) the number of bail violations;

"(b) sureties collected and outstanding with respect to bail violations;

"(c) the number of adjournments ordered in matters under the Criminal Code (Canada) and the Provincial Offences Act, indicating in each case,

"(i) the court location,

"(ii) the name of the justice,

"(iii) whether the adjournment was ordered before or after trial, and

"(iv) whether the adjournment was requested by the crown or by the defence or ordered on the justice's own initiative;

"(d) the number of court date cancellations;

"(e) the number of crimes committed by persons who are on bail, on probation or on conditional release, or who are or could be made subject to a criminal deportation order;

"(f) the number of gun offence charges dropped as a result of plea-bargaining; and

"(g) the amount of pre-trial sentencing credits provided."

The reason behind this amendment, Mr. Chair, is that the Attorney General and courts do not track and monitor this information, making it impossible to assess how well the justice system is working. If the government believes the system hasn't become a catch-and-release system, they should provide the statistics, and this allows for real progress reports to be made and assures accountability.

The Chair: Any other debate?

Mr. Runciman: I certainly hope the government members are going to participate and at least, if they're voting this down, provide us with some rationale, because we know that many in the public are very concerned with respect to what's happening in the courts in this province. We've seen significant attention paid to bail release decisions in the last number of months where individuals who have been charged with very serious crimes have been granted bail release and are back out on the streets. Police talk about it in terms of trying to

combat drugs in our communities. This is a very serious issue where people are charged with serious crimes in terms of drug trafficking and, again, the frustration of front-line police officers to see these people immediately back out on the streets and engaging in activities that are harmful to society.

So I think that the tracking—this is one element of the motion or the amendment, to keep track of the number of bail violations. We see this, again, reading the paper, where someone engaged in a shooting or a serious crime was out on bail. I think the public has the right to know how many of these are occurring.

Sureties collected and outstanding with respect to bail violations: We hear that this is a very, very significant number. I'm not sure if a serious effort to pursue this is undertaken or not, but I think this is something that we have to take a serious look at as legislators. We don't have a handle on the number at the moment, but we're certainly pursuing this from an opposition perspective. We're talking about a significant amount of money. It makes a bail situation a joke in some respects when you put up a surety and you know that you've failed to meet the conditions of bail and there's nothing done in terms of collecting on that commitment.

The number of adjournments, and we hear this on a regular basis: One of the significant causes of the backlog in courts right across this province, some better than others, is the number of adjournments that are being allowed in these situations. Again, I think we have a right as legislators, and the public at large has a right, to know what's happening within the justice system: Who's performing? Who's not performing? Where are the problem areas? I think that this, in terms of defining the court location, the name of the justice and some more specifics with respect to the adjournment decision itself, would be very helpful.

Again, when we talk about the number of crimes committed by persons who are on bail, on probation, on conditional release or subject to a criminal deportation order, these are individuals who are charged with committing crimes or have been convicted of committing crimes and they are out in our communities based on decisions made by the courts. Those decisions have allowed them to go back out amidst our neighbourhoods and once again engage in criminal activity. This is the sort of information that the public and legislators should have and, in my view, have the right to know.

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We talk about plea bargaining, and the Attorney General says, "We're not plea bargaining gun offences." Well, that's not what we're getting back; that's not the kind of information we're hearing. There still are efforts that are undertaken by crowns with respect to gun offences where those charges are lowered to something less than what they should be. I think we have the right to know what's happening in the system.

Pre-trial sentencing credits provided: That's helpful. This has become sort of a given in so many instances where judges are giving two-for-one or three-for-one

credits, in some instances, for awaiting trial in one of the provincial lock-ups. I think this has contributed to the number of adjournments that occur, because defence bar will argue, "It's not a pretty case to be spending additional time in a provincial lock-up," but if you're getting a two-for-one or a three-for-one credit, that, in some respects, is an attraction and an incentive to try to pursue further adjournments to delay the case coming to trial.

I think this is the kind of information that certainly we, as legislators, should want, especially those of us who are members of the justice committee of this Legislature. I think it would be helpful to the public at large to have a greater appreciation of what's happening in our courts and the decisions being taken by officers of the court.

Mr. Zimmer: The difficulty with the amendment is that it would amend section 74 of the Courts of Justice Act to require the ministry's annual report to give stats about judicial behaviour. Really, what we have here is an attempt to reintroduce the Judicial Accountability Act, which was defeated in an earlier Legislature because it was considered a threat to judicial independence. The ministry does not keep many of the statistics for that very reason: It's a matter of judicial independence.

Mr. Kormos: I beg to differ with the parliamentary assistant. I think it's incredibly important that this hard data, first of all, be collected—because I'm not convinced it's even collected. I'm talking about number of adjournments; I'm talking about bail.

One of the concerns I've had, and others have had, is the fact that while, on the one hand, the public might be concerned about people being released on bail, on the other hand, the public should be concerned about people being held in local lock-ups like Metro West, Metro East, who are inevitably going to be released on bail because the circumstances around their charge couldn't, in anybody's mind, justify a detention order, yet it's taking two, three, four and five days to get in front of a justice of the peace, and that's costing money as well.

Why should any of us be offended by the collection of data? I suspect that Mr. Runciman and I, while we may share some common ground on this, at some point part ways. I certainly do not advocate political supervision of the judiciary in the interests of maintaining an independent judiciary, but I think it is important to know if there are court locations that are having a greater difficulty dealing with their caseload than others, and one of the indicators of that would be the number of adjournments.

One of the reasons why adjournments are granted is because you don't have court space available for a trial. You've got to adjourn it. It's the crown requesting adjournments, too. It's a double-edged sword. The courts are booked up, you don't have enough judges and you don't have enough court staff. The original judges are dealing with incredible dockets in Family Court and in criminal court across the province—just incredible loads. What's happening, amongst other things, especially in bail courts, is that people are sitting there all day—the provincial prosecutor or the crown, the police who are

going to be testifying on the bail hearing, the defence counsel—and it's 6 o'clock. At some point the JP has got to shut the court down, if not in his interest then in the interest of the staff who work there, who have been working there since 8 that morning.

With this type of data, the name of the justice is where, if you had a quarrel with it, you might want to draw the line because of the inappropriate inferences that could be drawn.

One of the problems I've had is in asking the Attorney General—for instance, at some point, our caucus research, at my request, asked the Attorney General about the number of people currently in the witness protection program, and all we got was mumbling and fumbling; no hard response. We've asked the Attorney General about the number of applications for variations on dangerous offender and how many applications are being made. Again, it appeared to be "no hard data." This stuff is incredibly important. It's important in terms of how you plan ahead; it's important in terms of how you make for a more efficient court system. So I am a little amazed that the government, through you, Mr. Parliamentary Assistant, would have this response.

Plea bargaining is a real problem, and the reality is that there are still quotas out there in criminal courtrooms where crown attorneys are being called upon to clear X number of cases a month. If they can't clear them by trial—and they can't—they've got to plea bargain. They're under instructions. They're expected to meet quotas, and in the course of doing that, serious charges get pled down.

There's nothing wrong with plea bargaining if it's done for the purpose of making sure that the right charge is the one to which somebody pleads guilty and that the appropriate sentence is the sentence that that person gets, and expediting things in that way, but when it's driven by the quest for mere efficiencies, you've got some serious problems with it, don't you, Mr. Parliamentary Assistant? That's when you've got real problems.

I know why the government is loath to do this sort of stuff: because the government would be exposed in terms of its underresourcing of crown's offices, of Ministry of the Attorney General staff in those court offices across the province, of the people working behind the desk and serving as court clerks. These people are running ragged; they really are. They have huge responsibilities, they're not particularly well-paid—the people working in those court offices—and they're taking on huge, huge workloads. Crowns, the support for police—because it's not all just about the police officer, him or herself; it's the support for those police officers who are doing, for instance, the provincial prosecutor work, if they still do that from time to time.

I'm curious. I think it's in the public interest to know how many gun offence charges are dropped in the course of plea bargaining. That should ring alarm bells, and not the sort of knee-jerk, "Oh, lock 'em up and don't worry about reasonable doubt," but just in terms of how well the system's working. I don't think the system's working

particularly well, nor do a whole lot of people out there, Mr. Zimmer.

Mr. Runciman: I do have a great deal of difficulty—and perhaps this is from the perspective of a non-lawyer—but this whole issue of judicial independence and the bogeyman comes up any time anyone in the public talks about accountability in the justice system in this country, let alone the province of Ontario.

I recall a number of years ago when legislators in Alberta tried to constrain the salaries of provincial judges and they appealed to a higher court, so you had judges making these decisions about whether judges should get raises. Guess what happened? They got their raises, because the Legislature apparently was interfering in judicial independence with respect to trying to constrain the income levels of members of the judiciary.

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We're not talking about sanctions here in terms of looking at a specific court and a justice; there may be, as Mr. Kormos points out, some very legitimate reasons why delays are occurring in a significant fashion versus another court, and we should be able to address that in an appropriate way. I don't see this in any way as interfering with the independence of the judiciary in terms of the role they play. When we as legislators and we as members of the justice committee are dealing with legislative initiatives by a government of whatever political stripe, this is the kind of information that could be very helpful to us in terms of doing the right things to make the system better for all of us as residents of this province.

The Vice-Chair (Mrs. Maria Van Bommel): Further debate? Seeing none—

Mr. Runciman: I'm going to ask for a recorded vote on this.

The Vice-Chair: Shall PC motion number 8 carry?

Ayes

Elliott, Runciman.

Nays

Duguid, Jeffrey, Peterson, Zimmer.

The Vice-Chair: The motion is lost. We'll move forward to PC motion number 9. Mrs. Elliott.

Mrs. Elliott: I move that subsection 79.2(2) of the Courts of Justice Act, as set out in section 15 of schedule A to the bill, be amended by adding the following clause:

“(b.1) six persons appointed by the standing committee on justice policy of the Legislative Assembly.”

The purpose for this amendment, Madam Chair, is to introduce a role for the legislative branch and to increase transparency.

The Vice-Chair: Further debate? Mr. Zimmer and then Mr. Kormos.

Mr. Zimmer: The difficulty with this one is that this would let the standing committee on justice policy appoint six members of the court management advisory

committee. Generally, the Legislature does not appoint members of the executive branch, even when the courts are concerned. The real difficulty is that this runs the risk of politicizing the work of the courts, so I would urge my colleagues of this committee to vote against this.

Mr. Kormos: It's the management advisory committee. I'm of a mixed view around this one because I do not subscribe to the principle or the desire of some for political oversight of judges. That's what our courts of appeal do, in my view.

I find it interesting, though, when obviously the operation of the courts, the function of the courts, is very much a matter of resources and it's very much, at the end of the day, the result of some pretty significant political decision-making—I think it's an interesting proposition to have some elected presence on that committee. How else does the Legislature get direct feedback about the problems the courts are encountering? The management advisory committee, as I understand it, and I could stand corrected—look, you've got appointees by the Attorney General. What could be more political than that? He's not going to appoint his political enemies. He's not going to appoint people who don't—well, I shouldn't say that. He's not going to appoint people who contribute to his opponent in an election campaign. You've got appointees of the Attorney General.

It's an interesting proposition: six people, five people—I don't know; and whether or not they should be voting. To the extent the advisory committee can do anything more than simply monitor and make recommendations, maybe voting isn't the worst thing. They clearly would be in a minority in terms of the AG's appointments versus legal community participation.

By the way, where's the paralegal representation on this? Three lawyers appointed by the law society. Interesting, ain't it? The paralegals got stiffed again. The government pays mere lip service to them, yet the paralegals are being told that they're going to be participating in some of these forums, these judicially supervised forums.

Look, I don't think it's a particularly offensive proposition, and in the interests of the principle of it—because it doesn't even say, “members of the standing committee on justice.” It says, “six persons appointed by the standing committee on justice.” I, quite frankly, was hopeful that it would have said, for instance, perhaps, “one person from each caucus who participates in the standing committee on justice.” That would be a far more interesting proposal. But I think the Conservatives here have been very modest in their approach to this, and I will support this proposition.

Mr. Runciman: Really, the number was based on the current legislation and the fact that, as Mr. Kormos has pointed out, the Attorney General appoints six people to this advisory committee. So it is curious that the parliamentary assistant says that engaging the justice committee in this role rather than the Attorney General on his or her own is somehow politicizing the process.

One of the reasons behind this initiative, of course, is that in so many respects we were led down the path by

the Liberal government in terms of democratic renewal and trying to find a more meaningful role for backbenchers to play in this place in terms of decisions made by the government. You know, this is not a radical suggestion. The Attorney General makes these appointments. He's a political person, as far as I know. Why not engage this committee in this capacity? Give the elected members a greater role, and we may be able to assist in ensuring that some real ringer who's going to create some difficulties should not be an appointment to this august body. I would hope that the members would be supportive of this. I think it's an initiative that certainly falls well within what most of us would construe as democratic renewal around this place, giving us all a greater role to play in the processes of government.

The Chair: Any further debate?

Mr. Kormos: Yes. When the AG appoints somebody, that's called a political appointment. I'm not disparaging it; it's a political appointment. I was perhaps going to express some concern about the division of the judiciary and the executive, but the fact that the AG makes political appointments has already blurred that distinction. So again, whether the number is bang on is moot. I think, in principle, it's an interesting thing that should be considered, that should be spoken about. For that reason, again, I'll support this because I support it in principle.

The Chair: Further debate? Seeing none, all those in favour? Opposed? It's lost.

Number 10: a government motion.

Mr. Zimmer: Before I begin, this is seven detailed pages of very technical amendments. I propose to have Mr. Gregory address these matters, along with his staff. Given the length of the motion—seven detailed pages—would the committee consent to dispense with my reading of the seven detailed pages?

Mr. Kormos: Point of order, Mr. Chair: You can't. My submission is that we can't.

Secondly, this is such a massive rewrite that this warrants committee hearings in its own right. Is the parliamentary assistant going to sit down with the subcommittee and schedule some hearings on—this is a new bill. My goodness, Mr. Zimmer.

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The Chair: Mr. Zimmer, the motion has to be read into the record.

Mr. Zimmer: I move that section 15 of schedule A of the bill be struck out and the following substituted:

“15 Part V of the act is repealed and the following substituted:

“Part V

“Administration of the courts

“Goals

“71 The administration of the courts shall be carried on so as to,

“a) maintain the independence of the judiciary as a separate branch of government;

“b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice;

“c) encourage public access to the courts and public confidence in the administration of justice;

“d) further the provision of high-quality services to the public; and

“e) promote the efficient use of public resources.

“Role of the Attorney General

“72 The Attorney General shall superintend all matters connected with the administration of the courts, other than the following:

“1. Matters that are assigned by law to the judiciary, including authority to direct and supervise the sittings and the assignment of the judicial duties of the court.

“2. Matters related to the education, conduct and discipline of judges and justices of the peace, which are governed by other provisions of this act, the Justices of the Peace Act and acts of the Parliament of Canada.

“3. Matters assigned to the judiciary by a memorandum of understanding under section 77.

“Court officers and staff

“Appointment

“73(1) Registrars, sheriffs, court clerks, assessment officers and any other administrative officers and employees that are considered necessary for the administration of the courts in Ontario may be appointed under the Public Service Act.

“Exercise of powers

“2) A power or duty given to a registrar, sheriff, court clerk, bailiff, assessment officer, Small Claims Court referee or official examiner under an act, regulation or rule of court may be exercised or performed by a person or class of persons to whom the power or duty has been assigned by the Deputy Attorney General or a person designated by the Deputy Attorney General.

“Same

“3) Subsection (2) applies in respect of an act, regulation or rule of court made under the authority of the Legislature or of the Parliament of Canada.

“Destruction of documents

“74 Documents and other materials that are no longer required in a court office shall be disposed of in accordance with the directions of the Deputy Attorney General, subject to the approval of,

“a) in the Court of Appeal, the Chief Justice of Ontario;

“b) in the Superior Court of Justice, the Chief Justice of the Superior Court of Justice;

“c) in the Ontario Court of Justice, the Chief Justice of the Ontario Court of Justice.

“Powers of chief or regional senior judge

“75(1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:

“1. Determining the sittings of the court.

“2. Assigning judges to the sittings.

“3. Assigning cases and other judicial duties to individual judges.

“4 Determining the sitting schedules and places of sittings for individual judges.

“5. Determining the total annual, monthly and weekly workload of individual judges.

“6. Preparing trial lists and assigning courtrooms, to the extent necessary to control the determination of who is assigned to hear particular cases.

“Powers re masters, case management masters

“(2) Subsection (1) applies, with necessary modifications, in respect of directing and supervising the sittings and assigning the judicial duties of masters and case management masters.

“Direction of court staff

“76(1) In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court.

“Same

“(2) Court personnel referred to in subsection (1) who are assigned to and present in a courtroom shall act at the direction of the presiding judge, master or case management master while the court is in session.

“Memoranda of understanding between Attorney General and Chief Justices Court of Appeal

“77(1) The Attorney General and the Chief Justice of Ontario may enter into a memorandum of understanding governing any matter relating to the administration of the Court of Appeal.

“Superior Court of Justice

“(2) The Attorney General and the Chief Justice of the Superior Court of Justice may enter into a memorandum of understanding governing any matter relating to the administration of that court.

“Ontario Court of Justice

“(3) The Attorney General and the Chief Justice of the Ontario Court of Justice may enter into a memorandum of understanding governing any matter relating to the administration of that court.

“Scope

“(4) A memorandum of understanding under this section may deal with the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice, but shall not deal with any matter assigned by law to the judiciary.

“Publication

“(5) The Attorney General shall ensure that each memorandum of understanding entered into under this section is made available to the public, in English and French.

“Ontario Courts Advisory Council

“78(1) The council known as the Ontario Courts Advisory Council is continued under the name Ontario Courts Advisory Council in English and Conseil consultatif des tribunaux de l'Ontario in French.

“Same

“(2) The Ontario Courts Advisory Council is composed of,

“a) the Chief Justice of Ontario, who shall preside, and the Associate Chief Justice of Ontario;

“b) the Chief Justice and the Associate Chief Justice of the Superior Court of Justice and the senior judge of the Family Court;

“c) the Chief Justice and the Associate Chief Justices of the Ontario Court of Justice; and

“(d) the regional senior judges of the Superior Court of Justice and of the Ontario Court of Justice.

“Mandate

“(3) The Ontario Courts Advisory Council shall meet to consider any matter relating to the administration of the courts that is referred to it by the Attorney General or that it considers appropriate on its own initiative, and shall make recommendations on the matter to the Attorney General and to its members.

“Ontario Courts Management Advisory Committee

“79(1) The committee known as the Ontario Courts Management Advisory Committee is continued under the name Ontario Courts Management Advisory Committee in English and Comité consultatif de gestion des tribunaux de l'Ontario in French.

“Same

“(2) The Ontario Courts Management Advisory Committee is composed of,

“(a) the Chief Justice and Associate Chief Justice of Ontario, the Chief Justice and Associate Chief Justice of the Superior Court of Justice, the senior judge of the Family Court and the Chief Justice and Associate Chief Justices of the Ontario Court of Justice;

“(b) the Attorney General, the Deputy Attorney General, the assistant Deputy Attorney General responsible for courts administration, the assistant Deputy Attorney General responsible for criminal law and two other public servants chosen by the Attorney General;

“(c) three lawyers appointed by the Law Society of Upper Canada and three lawyers appointed by the County and District Law Presidents' Association; and

“(d) not more than six other persons, appointed by the Attorney General with the concurrence of the judges mentioned in clause (a) and the lawyers appointed under clause (c).

“Who presides

“(3) The following persons shall preside over meetings of the committee, by rotation at intervals fixed by the committee:

“1. A judge mentioned in clause (2)(a), selected by the judges mentioned in that clause.

“2. The Attorney General, or a person mentioned in clause (2)(b) and designated by the Attorney General.

“3. A lawyer appointed under clause (2)(c), selected by the lawyers appointed under that clause.

“4. A person appointed under clause (2)(d), selected by the persons appointed under that clause.

“Function of committee

“(4) The function of the committee is to consider and recommend to the relevant bodies or authorities policies and procedures to promote the better administration of

justice and the effective use of human and other resources in the public interest.

“Regions

“79.1(1) For administrative purposes related to the administration of justice in the province, Ontario is divided into the regions prescribed under subsection (2).

“Regulations

“(2) The Lieutenant Governor in Council may make regulations prescribing regions for the purposes of this act.

“Regional Courts Management Advisory Committee

“79.2(1) The committee in each region known as the Regional Courts Management Advisory Committee is continued under the name Regional Courts Management Advisory Committee in English and Comité consultatif régional de gestion des tribunaux in French, and is composed of,

“(a) the regional senior judge of the Superior Court of Justice, the regional senior judge of the Ontario Court of Justice and, in a region where the Family Court has jurisdiction, a judge chosen by the Chief Justice of the Superior Court of Justice;

“(b) the regional director of courts administration for the Ministry of the Attorney General and the regional director of crown attorneys;

“(c) two lawyers appointed jointly by the presidents of the county and district law associations in the region; and

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“(d) not more than two other persons, appointed by the Attorney General with the concurrence of the judges mentioned in clause (a) and the lawyers appointed under clause (c).

“Who presides

“(2) The following persons shall preside over meetings of the committee, by rotation at intervals fixed by the committee:

“1. A judge mentioned in clause (1)(a), selected by the judges mentioned in that clause.

“2. An official mentioned in clause (1)(b), selected by the officials mentioned in that clause.

“3. A lawyer appointed under clause (1)(c), selected by the lawyers appointed under that clause.

“4. A person appointed under clause (1)(d), selected by the persons appointed under that clause.

“Function of committee

“(3) The function of the committee is to consider and recommend to the relevant bodies or authorities policies and procedures for the region to promote the better administration of justice and the effective use of human and other resources in the public interest.

“Frequency of meetings

“(4) The committee shall meet at least once each year.

“Annual report on administration of courts

“79.3(1) Within six months after the end of every fiscal year, the Attorney General shall cause a report to be prepared on the administration of the courts during that fiscal year, in consultation with the Chief Justice of

Ontario, the Chief Justice of the Superior Court of Justice and the Chief Justice of the Ontario Court of Justice.

“Same

“(2) The annual report shall provide information about progress in meeting the goals set out in section 71 and shall be made available to the public in English and French.

“Inclusion in ministry’s annual report

“(3) The Attorney General may cause all or part of the annual report on the administration of the courts to be incorporated into the corresponding annual report referred to in the Ministry of the Attorney General Act.”

The Chair: Thank you, Mr. Zimmer. Any debate? Any debate, Mr. Kormos?

Mr. Kormos: I need a nap, not a debate.

This is, as Mr. Runciman has coined it, an omnibus amendment. Just a comment: I will venture to say that this amendment was not drafted in that period of time between the last public participant in the committee hearings and Monday, which is when it was distributed to us. This amendment, I suspect, was being drafted over the course of at least the early part of September, if not August.

I say to the government, there are a lot of amendments here. It would have been so nice had the government given us—look, no story’s being told out of school; there’s nothing here that’s the subject matter of press conferences—a little advance notice, number one, and a little accompaniment that undoubtedly the staff have prepared at least for themselves in anticipation of questions that puts this beside the existing part V so we can understand what it changes and what it doesn’t, because there are certain sections in part V that it appears not to change at all.

The problem is, we’re going to have to go through this line by line, because I’ll be darned—look, it’s tough enough as it is with an omnibus bill like 14. It’s easy enough to miss stuff, right? We’ve got to do our best to make sure that stuff doesn’t sneak through here, even from the government’s perspective, that wasn’t intended, at the very least, from the government’s point of view, but that from our point of view is bad policy.

So, Chair, again with the assistance of table staff, can we start with section 71 in the amendment? That’s the same section—it addresses the same issues as 71. There appears to be an additional paragraph. Can we go through these and understand what it does or doesn’t do to the existing bill? Because, for the life of me, I don’t think there’s a single change in this omnibus amendment that reflects input from the public. If there is, Mr. Zimmer will be quick to point it out to me.

The Chair: Is there staff who can summarize this for us?

Mr. Zimmer: Mr. Gregory, you and your staff, as you see fit.

Mr. Gregory: All right. To start, I’ll frame it a bit with general terms, and then, if it is helpful to committee to go through section by section, that’s certainly possible.

The bill itself—and section 15 of the bill runs over several pages—basically replaced part V of the Courts of Justice Act and the Administration of Justice Act. It did, perhaps, three things, largely speaking.

It set out goals for the administration of justice: What's the court system for? What's the goal? That's section 71. It set up the office of the chief administrator of the courts as running a court service agency—I'm not sure it's called an agency, but a court service branch, anyway. And it had that chief administrator reporting to the Chief Justices for some purposes and the Attorney General for other purposes, in what they called a "dual reporting relationship."

It became apparent during the course of debate in the House and in public feedback that some of these weren't going to be proceeded with, so the office of the chief administrator and the court service structure itself has been removed. We've talked about that in a couple of the other motions which were leading to this one, which is the guts of it. As a consequence, the dual reporting structure where there's a person in the middle between the Chief Justices and the Attorney General has been removed. So when you take out the chief administrator and you take out the dual reporting, then part V gets reconfigured into what is in the amendment.

Much of what is in part V in the amendment is the same as what part V is today in the Courts of Justice Act. In other words, a lot of the changes that had to be made because of the proposals in the bill have now resumed their original form.

The places where the amendment proposed by Mr. Zimmer still change the current act are, to start with, in the goals, section 71—it's still there; it's still new. As I believe Mr. Kormos pointed out, there is a new paragraph in it: (b) is new. It has been added by the motion to recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice.

The other new element in part V is essentially a formalization of that new clause (b) respecting the respective roles and responsibilities, and it expressly authorizes the Attorney General to enter into a memorandum of understanding with the Chief Justices—this is the new section 77 on pages 3 and 4 of the proposed amendment: "The Attorney General and the Chief Justice of Ontario may enter into a memorandum of understanding governing any matter relating to the administration of the Court of Appeal," and then with the other Chief Justices through their courts. Obviously, there have been informal arrangements between the ministry and the courts up to now; this is not a new idea, that these people should talk to each other. The new idea is having a formal, public memorandum of understanding so that people from the outside will be able to see it and see what is going on and who is doing what.

So the new elements of part V, as amended by the motion, are essentially goals, including the roles and responsibilities, and then the memorandum of under-

standing that formalizes the current understanding of those roles and responsibilities.

There is very little else in part V under the motion that is not in part V today. There is one little thing about regulations of the Lieutenant Governor for regional subsections or support offices or something that's really not a matter for the Lieutenant Governor in Council. But really, most of the change is reverting to what was in V.

I can go through section by section of the bill and say what has become of it in the motion if you'd like, but that's basically what's going on in the whole part.

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Mr. Kormos: Thank you, sir. We might as well start with the amendment, because that's what we are dealing with. I don't know, but if I were a betting person, I'd bet money that the amendment is going to pass, assuming that Mr. Duguid or Mrs. Jeffrey are engaged—not with each other but with the work of the committee.

Mr. Duguid: We're good friends.

Mr. Kormos: Okay. Let's deal with administration—and I'm not being silly here—because we're talking about administration of the courts by the Ministry of the Attorney General, but also, to a large extent, by the respective Chief Justices. Is there not an administrative role when you talk about the power of the Chief Justice to direct judges to sit and—

Mr. Gregory: Oh, for sure. The Chief Justices have an interest in and a role in the administration. One of the purposes of this is to help sort it out and, frankly, through the memorandum of understanding, to publicize it a bit better than it is now, rather than just having backroom talks.

Mr. Kormos: Where was the problem? Other than paragraph (b), which we'll talk about, why was there a need to write this amendment to the act, be it in the old part V in the bill or in the current one? Or is this sort of a statement of principle that doesn't really have to be codified in law? Is this going to help anybody? Is this going to eliminate any litigation over the administration of the courts?

Mr. Gregory: I think the answer to that is not so much litigation as simply setting out some principles so that the courts and the ministry don't have to argue about it and say, "That's a matter of this principle or that principle." It also helps the public understand what the court administration is, that there are separate roles out there.

As well, at the time the bill was conceived, you were setting up a dual reporting court service administration; that is, if you're doing that, you should say what its job function is, what its mandate is. Part of that is in section 71, and, having stated that, it's still a good idea. Even if you take out the administration, the principles remain valid. It's really a public declaration. It is one that gives both sides of the discussion—that is to say, the ministry and the courts—principles to rely on in their discussions.

Mr. Kormos: You're aware that we had at least two presentations that made reference to this whole conflict between litigants, members of the public, and judges around the use of tape recorders in the courtroom.

Mr. Gregory: I heard one of them.

Mr. Kormos: That's right. Is paragraph (c), for instance, capable of being used by one of these parties who wants to insist upon what he or she perceives as their right—I don't know whether it's a right or not—to bring a tape recorder into the courtroom? Is paragraph (c) capable of overriding the traditional—what is the reference there?—the court's capacity to govern or rule or manage its own process? Do you understand what I'm saying?

Mr. Gregory: I understand that. I would be skeptical of it. I can't give a legal opinion that this will not be used by somebody. There is a provision in the Courts of Justice Act now that deals with taping, saying, "You may tape with the consent of the judge." You heard from someone—

Mr. Kormos: I'm using that as an example. Let's talk about paragraph (c), though.

Mr. Gregory: The issue is that once you're starting to state the goals, then it makes sense to say this. How usable is it? I can't give you an opinion on how usable it is or for what purposes it would be used. "This is not sufficiently high quality, therefore you have violated my legal rights," or, "My high quality has a certain content." I can't speculate on what the content might be.

Mr. Kormos: Let's take the Runciman perspective. Should Mr. Runciman take comfort in this paragraph because it says, "Administration of the courts shall be carried on so as to ... encourage ... public confidence in the administration of justice"? He's very articulately talked, from time to time, about the lack of public confidence in the administration of justice. So is this of comfort to those out there who want to have more? I'm specifically asking you about the extent to which this paragraph (c) starts to permit people to encroach—and whether it's a good thing or a bad thing, there can be debate about—upon that historic independence of the judiciary. Am I correct in the language? The power or capacity of the court to manage its own affairs, process—you know what I mean. What's the right legal phrase?

Mr. Gregory: I'm not sure, but I know what you're—the court has its own power to do these things.

Mr. Kormos: Yes.

Mr. Gregory: It's certainly a standard that will be used in discussions. It would be fair for someone to say, "All right, the statutory goal in the Courts of Justice Act is to do this. You have done that. This does or does not meet that standard," depending on the view of the person using it. Again, it's a goal. What is the legal effect of a goal? It's one that you aspire to and it's one that you are held to or that your performance is compared to.

Mr. Kormos: Thank you, sir. The other one, of course, is paragraph (e). Let's take a look at that. That's not different from what's in the existing bill, but "promote the efficient use of public resources." We know what that can be code language for. It could be code language for saying, "Let's have tape recorders in courtrooms instead of real, live court reporters because that's the efficient use of public resources." It's cheaper, yet we

know what has happened in courtrooms where the tape recording equipment has fouled up and not delivered, and then we've got all sorts of appeals that are being granted because the court of appeal doesn't have a record upon which to rely, etc.

I appreciate your comments, but I find this a very peculiar section in part V, because I wonder what its motive is. Is it just feel-good stuff, or is there stuff in there, like "promote the efficient use of public resources"? What is the impact of "encourage public access to the courts"? Will this open the door for judges? Because you've seen the courtrooms where judges have ordered, for instance, legal aid to provide counsel for litigants. Will this open the door for judges—I would be grateful if it did—to order that litigants have counsel? What was the name of the Ontario Court of Appeal decision? It was the fellow who's on CBC now, the hashish dealer who—

Mr. Gregory: Courts have occasionally ordered that people be provided counsel; there's no question.

Mr. Kormos: Yes, but the application is called a—

Mr. Gregory: I don't know—

Mr. Kormos: The case, again, is the hashish smuggler, remember, who had all these wonderful precedents. He's a CBC correspondent now.

Mr. Gregory: Rowbotham?

Mr. Kormos: Rowbotham, yes. A delightful guy—well, obviously a pothead. But it created some tremendous case law. I think that's what they're called, Rowbotham applications, and I may be wrong.

Are courts going to be able to rely on this thing? Look, the Courts of Justice Act says that the administration of the court—here I am a judge and I have an administrative role, I presume, even in the course of sitting on the bench in my courtroom. Is this going to permit judges to grant applications? Or could it give clever defence counsel like friends of mine, like Mark Evans or Charlie Ryall, or people like that, Frank Addario—are they going to be able to use this to persuade judges to say, "Well, it's encouraging public access to the courts"? Does that mean litigants or does it mean, for instance, the public? I've heard a tale of a deputy Small Claims Court judge up at the Sheppard courts who literally won't allow the public into his courtroom. He throws them out. Now, nobody has taken him on, although somebody should. I may go up there and get myself found in contempt of something, just to challenge the proposition. But what does that mean? What does "encourage public access to the courts" mean?

I'm serious when I say that to you, Chair. Is this feel-good language or does it have a purpose? The government hasn't come up with any explanation in that regard. "Promote the efficient use of public resources": well, of course. Or is it code language for allowing the government to justify not having real, live court reporters, or to justify, for instance—you know the argument. The province doesn't pay for courtroom security anymore, right? It has become an increasing problem for municipalities, and the argument is, "Oh, we've got police officers in court on a daily basis anyway who, just by

virtue of being there, waiting and waiting and waiting to testify, constitute courtroom security.” Is this going to permit the government or justify the government using that sort of tack or that sort of approach?

Chair, I seek unanimous consent to have a four-minute adjournment, please.

The Chair: Is there unanimous consent? We’ll be having a four-minute recess.

The committee recessed from 1411 to 1416.

The Vice-Chair: We’ll reconvene the standing committee clause-by-clause hearings. We will continue with the debate on government motion number 10. Further debate?

Mr. Kormos: Okay, I’m going to leave section 71 at that. I’m still not sure the government knows what it’s doing—seriously—when it’s incorporating it into the bill, nor am I sure that they’ve thought about the repercussions one way or another. If it is just fluff, if it’s not binding—in other words, if, for instance, a lawyer or a member of the public can’t utilize “encourage public access to the courts” or “public confidence in the administration of justice,” then why is it in the law? It’s silly.

Section 72, if I may: What, if anything, is new about this?

Mr. Gregory: Section 72 has not changed from the bill, in fact. Section 72 is the same as in the bill.

Mr. Kormos: Okay, but what, if anything, is new about it?

Mr. Gregory: As between it and the current Courts of Justice Act?

Mr. Kormos: Yes.

Mr. Gregory: It clarifies the joint responsibility of the judiciary and the Attorney General. In 72, the Attorney General shall superintend all matters other than matters assigned by law to the judiciary, matters relating to education etc. of judges or matters in the memorandum of understanding that are assigned to the judiciary. So it basically clarifies that there are two sources of authority for the courts, which hasn’t been spelled out before in the law.

Mr. Kormos: And if I may, maybe judges thought it was inappropriate to speak to the bill, but nobody from the judiciary has complained about this. I’m concerned that they might have concerns, but nobody has complained about it, so what can we do?

Yes, 73—not so much subsection (1), because that’s pretty straightforward, isn’t it—appointment of court officers and staff? You’ve got “Deputy Attorney General” here, as compared to the Attorney General. Is this something that’s new or is this simply status quo?

The Vice-Chair: Can ministry staff respond, please?

Mr. Gregory: I was just trying to track it, because what was 73 and 74 in the bill have fallen out. What Mr. Kormos is talking about is 73 in the motion, which corresponds to 75. Essentially, the language of 73 is what is now in 77 of the Courts of Justice Act. Having taken out the amendments about court administrator and things, it has fallen back to the current act. So there is not a difference in the reference to the deputy.

Mr. Kormos: Okay, and it includes “or a person designated by the Deputy Attorney General”?

Mr. Gregory: Yes.

Mr. Kormos: Okay, thank you. The destruction of documents: I don’t know—

Mr. Gregory: That is, word for word, the current—

Mr. Kormos: Yes, 76.

Mr. Gregory: Section 74 in the motion is the same as 79 in the current Courts of Justice Act. The amendment that was proposed to the language in 76 has been removed, so 74 is the same as the current 79 in the act.

Mr. Kormos: Hold on. We’ve got “Documents and other materials that are no longer required in a court office shall be disposed of in accordance with the directions of the chief administrator”—oh, the change is “Deputy Attorney General.”

Mr. Gregory: “Chief administrator” is out from the bill because there is no—

Mr. Kormos: Because there is no chief administrator.

Mr. Gregory: We’re removing that person; right.

Mr. Kormos: So you’re saying that 74 in your amendment that Mr. Zimmer just moved is identical to the existing Courts of Justice Act.

Mr. Gregory: Yes, section 79 of the current Courts of Justice Act is the same, word for word.

Mr. Kormos: “Powers of chief or regional senior judge” appears to be the same as in Bill 14.

Mr. Gregory: It is. Section 77 of the bill has become 75 in the motion.

Mr. Kormos: Is that the same as the existing Courts of Justice Act?

Mr. Gregory: Yes. In fact, it’s one that satisfies our colleagues the drafters, I guess. There is one phrase that is reversed from the current act, where it now says in the opening line, “a judge who has authority to direct and supervise.” In the current act it says “the authority to supervise and direct.” That is, believe it or not, the only change in this from the current Courts of Justice Act.

Mr. Kormos: Somebody on a team sat and argued for that.

Mr. Gregory: Well, I gather that it’s “direct and supervise” in most of the other equivalent provisions and someone thought, “Let’s have it the same.” No doubt the French is suitably revised.

Mr. Kormos: What’s the reason for the memorandum of understanding in 77, in the Zimmer amendment?

Mr. Gregory: There are two needs that are reflected in it. One of them is just to make sure that you have the power to make formal arrangements rather than simply, “Well, if you don’t do this, I’ll do this. How about it?” It’s not a backroom deal or a hallway conversation. It’s actually something spelled out, which is useful for both sides because then, six months later, you’d remember what the deal was, so to ensure that there’s that authority. But where the bill goes further than that is to say, “And it is to be made public.” Subsection (5), “The Attorney General shall ensure that each memorandum of understanding entered into under this section is made available to the public,” meaning that litigants and counsel and the

public generally, if they're interested in the administration of justice, can know what's going on. "Why is the judge doing that, I wonder?" Or, "Minister, you're supposed to be doing this because it says in the memorandum of understanding that you're supposed to be doing this." So it's (a) formalizing and making sure there's the authority for the formalization and (b) making it public, which it never has been before. The informal arrangements were never accessible. So if you knew the system really well, you knew what was going on, but if you didn't, you didn't have much hope. This makes it clear.

Mr. Kormos: Thank you kindly. I think we dealt with the various 79s during the course of discussing Mr. Runciman's amendment, so I think we have—at least I do—a fairly good understanding of what those mean. Thank you, sir.

Chair, very briefly, there is concern about discretionary destruction of materials. We have in section 76 of part V of Bill 14 the provision for discretionary destruction of documents and other materials, which I presume means evidence. We have that section repeated in Mr. Zimmer's amendment, and that phenomenon has been a source of great concern by lawyers and others who have to pick up on a matter that could be 10 or 15 years old. How old is the Truscott case? It's as old as I am, darn near. For the life of me, I don't know why the Attorney General of Ontario is putting Mr. Truscott through the ordeal that they have.

It seems to me that in this day and age, when we recognize the value of evidence, even to the extent, obviously, where it contains DNA—a piece of paper—and I don't purport to be a scientist or an expert in that regard—but a document that might have been filed, a cheque in a trial, a bank cheque that somebody is alleged to have handled, and the availability that it provides—in the old days just for fingerprints, but now for things in addition to fingerprints—it seems to me, notwithstanding the inevitable cost—we've got a provincial archives that's falling down around them. Mr. Phillips still hasn't addressed that, but I digress. Notwithstanding the cost, it seems to me that we have to develop a far more secure and predictable system to ensure the protection of these documents.

I will not support Mr. Zimmer's motion for that reason. I don't believe it's adequate, notwithstanding what the status quo is. The status quo is part of the problem. I think it's important that there be something far more concrete in terms of saying what is and what isn't to be preserved, to be archived, and I cannot support this motion for that reason.

The Chair: Any further debate?

Mr. Runciman: It's a brief comment, Mr. Chair. We can't support the motion either. If you look at several elements of this amendment, it's an omnibus amendment to an omnibus bill.

Encouraging public access: I think there are very serious questions surrounding this legislation. Public confidence: When we moved an amendment earlier to try and really address the issue of public confidence, it was

rejected by government members. Efficient use of public resources: I think it will probably, as Mr. Kormos said, not have a real impact, in terms of improving the operations of the courts, but we'll be looking at things like removing court reporters and those kinds of people on the lower end of the totem pole who will be negatively impacted by those kinds of initiatives, rather than addressing some of the real problems within the system.

The questions and the concerns Mr. Kormos said really highlight that this process is something of a mockery of democracy. We've pointed out that we have members of the government here today who have not participated in these hearings at all and are not familiar with the subject matter to any significant degree, and that's not their fault; they've been assigned to this.

Then we have this huge package of amendments—in this case, six consecutive pages of the original bill being pulled—and we haven't, from the opposition's perspective, been given the rationale so that we can effectively look at these and hopefully do it in a timely way. We have to go through this process of questioning the ministry staff to try to have some understanding of just exactly what is being changed here again, why is it being changed, and what is the end result. That's a truly unfortunate lack of co-operation, and I think it sends out all the wrong messages about this Legislature, about its standing committees and about our ability to do an effective job.

Mr. Kormos: A recorded vote.

The Chair: A recorded vote. All those in favour?

Ayes

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: It's carried.

Shall schedule A, section 15, as amended, carry?

Mr. Kormos: A recorded vote, please.

Ayes

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: It's carried.

Any debate on section 16?

1430

Mr. Kormos: Mr. Chair, you may want to, let's see, deal with 16 and 17 together.

The Chair: Any debate on sections 16 and 17?

Shall sections 16 and 17 carry? Carried.

PC motion number 11. Mrs. Elliott.

Mrs. Elliott: I move that subsection 116.1(1) of the Courts of Justice Act, as set out in section 18 of schedule A to the bill, be struck out and the following substituted:

"Periodic payment, medical malpractice actions

"116.1(1) Despite section 116, in a medical malpractice action where the court determines that the award for the future care costs of the plaintiff exceeds the prescribed amount, the court shall, on a motion by the plaintiff, order that the damages for the future care costs of the plaintiff be satisfied by way of periodic payments."

The Chair: Any debate?

Mrs. Elliott: Mr. Chair, if I may indicate that the purpose of this amendment, together with our subsequent amendment, which will be dealt with shortly, for section 116.1(8) of the Courts of Justice Act, is, in our view, probably one of the most important amendments to the entire section A that we will be suggesting because, in our view, the amendment to section 116, as it now stands, denies a fundamental justice to plaintiffs in court actions involving medical malpractice awards. It's our submission that this amendment to the Courts of Justice Act, buried as it is in this omnibus bill, has significant repercussions. I would urge all the members of the government side to consider the significant, powerful and very poignant testimony that we heard from some of the witnesses who appeared before this committee with respect to this subject.

The amendment, as proposed, would give the plaintiff the right to choose, in a medical malpractice action, whether to accept a structured settlement or a lump sum payment. The amendment to 116, as drafted, would allow a defendant against whom an award has been made in a medical malpractice action to ask for a structured settlement, which can only be turned if a judge sees that it's not just to the plaintiff and it's such a circumstance. This fundamentally alters the way that these sorts of awards are dealt with by the courts and reverses the onus of proof to require the plaintiff to prove that it's unjust. This sets aside, as some witnesses have suggested, 200 years of common law court precedents. It's curious that it's only in medical negligence cases—medical malpractice cases—that this amendment is proposed and not to all personal injury cases. One would have to wonder why that's the case.

We've heard from several witnesses, including Mr. Kolody, who, as the parent of an injured child and who has a medical malpractice action before the courts, did indicate to us that all that these amendments would do, as proposed by the government bill, would not bring justice to the victims in these situations; it would only increase the money available to the lawyers in the cases, because what would happen is that it would bring a whole level of argument back to the courts about whether or not there should be a structured settlement at all. So rather than increase justice for injured victims, what this legislation would do, if not amended by our suggested amendment, would simply be to make the lawyers richer. For that reason, we've suggested the amendment. I would urge the members of this committee to take a very serious look at this.

Mr. Kormos: I am extremely troubled by section 18. I'm troubled by its inclusion in this bill, by the effort to sneak it through, by the less-than-straightforward representations made to the committee on behalf of advocates of the amendment contained in section 18.

Ms. Elliott's motion recognizes that, inevitably, if it's the defendant in a civil action, a personal injury action, who seeks the annuitized payment, the structured payment, you can bet dollars to doughnuts that it's not out of a sense of generosity to the plaintiff. If there was any generosity to the plaintiff in a successful personal injury action for malpractice, the defendant would have settled it literally years earlier, because that's how long these matters can take to go to trial.

I don't think we're in a position, quite frankly, to deal with section 18 at all. But I certainly do support the amendment, because it's a way of highlighting and addressing the gross injustice to innocent victims that's contained in the current section 18.

Mr. Zimmer: What this amendment effectively does is amend the opening words of the new section to give the option of receiving periodic payments entirely to the plaintiff. What the amendment does is reverse the policy of the bill, which is to require periodic payments unless it would be unjust to the plaintiff. The amendment would lose most of the economic and social advantages of the bill, which is the whole point of it. So I urge my colleagues to vote against this.

Mr. Kormos: Social advantages, my foot. The fact is that, over in section 8, it's the plaintiff that has to satisfy the court that a periodic payment award is unjust. You take a look at this, and what's sauce for the goose seems to me to be sauce for the gander. Who are the powerful parties in these litigations? It's almost inevitably not the plaintiff. The plaintiff's already had to beg, borrow and steal from friends, family and neighbours to sustain even a legal action that's operated on a contingency fee, because there are still going to be disbursements and out-of-pockets that have to be paid; or they've mortgaged a house if they're the parents of an innocent victim. They're the ones who can be so readily and easily pressured into settling. You know the syndrome. Granted, the CMPA—is it the CMPA? Is that the correct acronym?—is not an insurance company, like, "You're in good hands with Allstate," so to speak, but they are the insurer. No, there's no parity between the two parties. I'm sure you've witnessed, if not first-hand at least in a detached way, what medical malpractice litigation consists of. It is defended to the final, with no expense spared in terms of defending it.

I'm going to speak further to this, because this whole naive and dishonest proposition about how insurers are being crippled by huge awards is bunk. That's an American phenomenon that the Canadian courts have not travelled down. You know that. We don't have the multi-million-dollar awards and another \$50 million thrown on top of it for punitive damages in this country. As a matter of fact, litigators like Mrs. Elliott could explain to you what I believe is called the trilogy of cases, where the

courts have been instructed to cap non-monetary damages, quite frankly, at an alarmingly low level.

I resent it when insurers, whether they're of the types that doctors have by joining together or whether they're the Allstates of the world, blame the innocent accident victim and want to deny him or her full payment to try to make their—think about this. Look, when you've got somebody who's a quadriplegic or a paraplegic, quite frankly, no amount of money is going to change anything. What do you think—they're going to go buy a motorcycle with it? Life ain't like that. What the courts do their best to do, in the context of the law, is ensure that there's some modest level of care for that person.

1440

The tragedy of a child or a young teenager or a young adult who's left with a brain injury or with paraplegia or quadriplegia is just profound. I don't know if lawyers do it in Canada, but in the States, part of the presentation to juries is what they call day-in-the-life documentaries, where they want to portray in a very vivid way the daily life of an innocent victim—a head injury victim, a paraplegic, a quadriplegic. It starts with not being able to get out of bed. It starts with having to be rolled over and needing special mattresses so you don't get bedsores. It starts with manual evacuation of the bowels, because, you see, depending on the nature of the injury, you literally can't move your bowels. Then to somehow suggest that we should be saving money at the expense of these people? I don't buy it. Don't forget, in the case of medical malpractice, you're talking about a finding of negligence.

I'm going to speak a little bit further to this when we deal with section 18 after the proposed amendments. But I support the amendment.

The Chair: Any further debate?

Mr. Kormos: A recorded vote, please.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

The Chair: That's lost.

Next is PC motion 12. Mrs. Elliott.

Mrs. Elliott: I move that subsection 116.1(8) of the Courts of Justice Act, as set out in section 18 of schedule A to the bill, be struck out and the following substituted:

"Application for lump sum

"(8) Despite subsection (1), the court may order that the future care costs be paid in whole or in part by way of a lump sum payment on motion of the plaintiff at any time before final judgement at trial."

Again, if I may indicate, the reason for this amendment is based on the reasons as previously stated. But if I may add in this case, the right of a plaintiff to choose whether to have a lump sum payment or a structured

settlement has always been the case: The plaintiff traditionally has always had the right to make that choice. In some cases, a structured settlement will be appropriate, but in some cases, it won't be. What they're going to be faced with in this situation is that they're going to be stuck with a structured settlement unless they're able to prove that it would be unjust. In legal terms, this is a huge change, because it reverses the onus and puts the plaintiff at an extreme disadvantage. They have an uphill battle here to prove that it's unjust, because the court is starting with the proposition that that's the way it should be. No size fits all in these circumstances.

To suggest that this is more just for the plaintiff is ludicrous, because, as Mr. Kormos has indicated, in medical malpractice cases, the defence is vigorously defended to the very end, in the face of almost ludicrous results. What happens is, it gets defended until the final moment if an order is made and a structured settlement is awarded. The plaintiff, who has limited resources compared to the defence side in this situation, then has to go court and probably argue for days, perhaps even weeks, with probably one lawyer up against 18 or 20 lawyers, that this onus should be reversed. In a situation where you have a catastrophically injured child and you have to sell your house or mortgage your house in order to do this, it can't be seen to be even remotely fair.

In this situation, the only people who are going to be making money are the lawyers, as I indicated before. The lawyers, in acting for the defence in these medical malpractice situations, have almost unlimited funds; they don't necessarily have to be accountable. They can argue till the cows come home because to a certain extent, and this is what fuels the fire for a lot of the plaintiffs, they are being denied justice by the lawyers whom they're in part subsidizing because of the payments that are made by the Ontario taxpayers to the OMPA to subsidize the medical negligence premiums they pay. So, in other words, they're being held up in court by their own money in a system that is absolutely not accountable. That's the reason why we're proposing this amendment: because this puts plaintiffs up against a huge wall that they are never going to be able to overcome.

Mr. Zimmer: As I've said before in my remarks, the same thing follows in this section. What this would do is allow the court to order a lump sum for the payment at any time. What it does is it reverses the policy. As I've said before, the policy is to require periodic payments unless it is unjust to the plaintiff.

Mr. Kormos: Mr. Zimmer, with respect, I don't think that's what this amendment says. This amendment permits what I colloquially call blended awards, lump sum plus structured settlement plus periodic payments. It's unclear as to whether your amendment will permit that, whether it has to be all or nothing. I think this is a very thoughtful amendment. You don't have to exhaust the imagination to think of cases where—because we're talking about future care costs, right? Appreciating that, you don't have to exhaust the imagination to think about cases where a substantial lump sum, for instance to deal

with some immediate needs—mention was made of having to buy equipment, renovate a house, buy a new house, buy a house when you don't have a house because you're on the 15th floor of a high-rise apartment building and it doesn't work too good if you've got some of the serious disabilities that medical malpractice can impose.

Again, I shake my head. This seems to me to ensure that there is sufficient flexibility to provide for fairness. Let's be cynical and even pragmatic. I'm loath to employ this argument, but if somebody tragically injured—in any scenario, not just medical malpractice—isn't adequately compensated during the course of litigating with the wrong-doer, at the end of the day, everybody picks up the tab, or a person whose life has been knocked to its knees is struck prone. That's not what we believe in in this country, is it? I don't think so. Your whole section 18 is very troubling. This amendment tries to help you out. If you don't want to take the advice, God bless.

The Chair: Any further debate?

Mr. Kormos: A recorded vote, please.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Jeffrey, Peterson, Van Bommel, Zimmer.

The Chair: It's lost.

Any debate on section 18?

Mr. Kormos: This section, snuck into this omnibus bill, is really a critical piece of legislation. I want to remind people of the outstanding presentation made by David Kolody on his own behalf and on behalf of his wife, Deirdre McIsaac, who, as he explained, had to be home in Ottawa taking care of the kids. He spoke to us about various ways of inflation proofing. You can use real inflation, I suppose you can use projected inflation, or you can require indexing based on the CPI, the consumer price index. I thought his was a very thoughtful presentation.

1450

We also heard some interesting commentary about how lump sums are inherently inflation-proofed because, when they're invested in conservative investments, that income—bonds and so on—reflects, amongst other things, and accommodates for real inflation, as I understood it.

Why we are rushing into this—and I don't want to pretend I know what goes on your caucus room, you government members, although I've got a pretty good idea, having been in one in a number of contexts. But I'll bet you once again that there hasn't been a whole lot of discussion around section 18 of this bill simply because there have been a whole lot of other things that have been on the burner.

I understand the government's urgency to get a para-legal regulation regime going. I understand the govern-

ment's urgency and interest in getting an enhanced JP appointment structure into play. But what's going on here? Who spoke to whom? This amendment in section 18 didn't come from the plaintiffs' bar, did it? As a matter of fact, in view of their seeming surprise about it, I doubt if they were even consulted. We didn't get a chance to ask the OBA if it was consulted, but they didn't use their opportunity in front of this committee to indicate that they were. We had an actuary here, but his focus was not quite on this point, although some actuarial input around the issues that have been raised here, the conflicting interests, might well have been valuable. Striking "it's only medical malpractice"—but just watch. Do you think that greedy, avaricious, short-armed, deep-pocketed insurance industry out there ain't gonna pick up on this one in short order? Ms. Elliott has been quick but not inappropriate to say that it's the defence lawyers in these personal injury actions who are going to be making the big bucks. They already do.

Just as the physicians and their various lobby groups say that every penny you take away from direct health care means less money to direct health care, every penny that you take away from a judgment means less money for the victim. Lawyers make money. Hell, the insurance companies who sell annuities are the big winners here. Do you think they're gambling? Do you think this is like—what's that TV series with James Caan about Las Vegas? Do you think the insurance companies are sitting at a blackjack table? There is every certainty when they sell an annuity, and there's a big chunk of profit built into it, isn't there? Every penny that goes to the insurance company's profit is less money in the health care system and is less money that helps an innocent victim sustain some modest lifestyle with some modest level of dignity.

There's also another interesting issue here because, with the introduction of contingency fees in the province of Ontario, plaintiffs can access counsel, lawyers, in a way that they couldn't before. I don't know the answer to this one. Does the prospect of a contingency fee, 20% of the award, to the lawyer shock some people? I suppose it does, but we had a debate here in the Legislature and those issues were raised. The Legislature decided that contingency fees were going to be allowed, and I had to concede, as someone who had concerns about it and mixed views, that, yeah, there would be cases where a lawyer/firm might be willing to undertake a plaintiff's case, even though it wasn't a slam dunk, as they say, on the basis of the prospect of contingency fees.

So tell me: When there is a structured settlement, where does a lawyer or a law firm draw its contingency fee from, and will this phenomenon, the right of a defendant to insist upon a structured settlement, be a disincentive for lawyers/law firms undertaking the less-than-100%-sure cases on contingency fees? Think about it. I don't know the answer. I don't know if I'm out in left field.

The problem is, we haven't had a chance to ask that question. We haven't had a very thorough consideration of section 18 at all, at all, at all. I'm not at all surprised

where the doctors are coming from, and again, God bless them. They had and have interest in this matter, and they're advancing their interests. I understand that, and good for them. They're entitled to do that. Where did this thing sneak up on? I don't know. I don't think it was a part of the Liberal election campaign. I suppose I wish it was, because then they could have broken that promise and we wouldn't have section 18 in the bill.

This is very sad stuff. This is, effectively, in some respects, tort reform that could have significant repercussions without even any—never mind real; never mind meaningful—superficial consideration. It is very troubling. I just find this the very worst of law-making. This isn't an ideological thing; this is a matter of trying to get it right, because you know it ain't going to be revisited in the next 12 months, will it? If anything, if it's ever revisited, it will be the insurance industry, the auto insurance industry first and foremost, lining up.

We don't know what it means in subsection (8), "to the extent that the plaintiff satisfies the court."

What is this—musical chairs? You can't even keep a member here for a day? Tag team?

Mr. Duguid: Not at this rate.

Mr. Kormos: It's like the Kalmikoff Brothers from old wrestling days, for Pete's sake.

Mr. Duguid: They'll fill me in on this.

Mr. Kormos: They've got attention deficit disorder over there on the Liberal ranks. The Kalmikoff Brothers. Remember the Kalmikoff Brothers?

The Chair: Mr. Kormos, if you can—

Mr. Kormos: Yes, Chair. We don't know what the standard is for "plaintiff satisfies the court that a periodic payment award is unjust." The advocates for the amendment suggested that that was a pretty high standard, didn't they? I found that very interesting, because it seems to me that it should be a pretty low standard. But we don't have any comfort level around that. This is bad; this is a bad way to approach things.

1500

I would invite government members—you're not going to scuttle the bill, although I'll get to that when we get to the end of clause-by-clause—to take section 18 and join and trust all of the opposition members in defeating it. It can be revisited—it can be; there's no problem with that—but it surely should be discussed and debated and analyzed at a far broader level and a far more sophisticated level than we've had a chance to deal with here.

Mr. Runciman was here. These are the sorts of issues that came up during what I call the "insurance wars" back in the 1920s and through the 1990s—heck, and beyond 1995 and into the mid- and late 1990s as well. There were, whether I liked the result or not—and I didn't—lengthy debates. And not just the debate, the nattering back and forth, but there were lengthy, lengthy public hearings where there was a thorough canvassing. As I said, did I agree with the result? No, I didn't, but I'll say this: There was a thorough canvass.

David Peterson had the very, in my view, ill-conceived no-fault auto insurance, and history has proven

its critics right. Murray Elston was the minister; I've got time for Murray Elston. They accommodated a thorough, lengthy committee process; as you know, the lengthiest debate the Legislature has ever heard.

This is far too important; it's heartbreaking, because right now there's a kid out there, or a teenager, or—you know what?—a mom giving birth, because just anecdotally, that's one of the areas where you get into some problems from time to time with medical malpractice, right? A mom giving birth—whose life is going to be changed forever because of section 18. We owe it to that kid or that teenager or that mom giving birth.

You see, the problem is, the industry says, "The extraordinary settlements are forcing"—that's what the auto industry was saying, and the property liability insurance. Remember the mythical case of the kid on the scooter driving on the municipal road and there was the multi-million-dollar judgment? That judgment was overturned on appeal. The insurance industry never told anybody that, did they? It was overturned because our courts don't allow those very high, American-style judgments. But they flogged that one to death; they beat that horse until its knees buckled.

That's a bogus argument. There's not a whole lot of medical malpractice that does take place. That's a good thing; that speaks well of our doctors, of our health care system. If you want to reduce the costs of medical malpractice suits, then you do what you've been told by at least one witness: You not only encourage but you muscle people into sitting down and having meaningful settlement discussions at the front end.

You've got a mandatory mediation program in your superior courts, in your civil courts, but it's at the back end. It's after everybody has already spent all of their money, and it's treated as part of the checklist: "Oh, nuts; we've got to visit the mediator before we can proceed to trial."

Get speedier settlements. That will reduce a whole lot of costs. Leave some of those defence lawyers with their big, fat Montblanc pens and Gucci shoes moaning and groaning. They're doing just fine, thank you.

I'm voting against this. I'm asking for a recorded vote. This is just very sad.

Mrs. Elliott: I just find it strange, as Mr. Kormos has indicated, that this amendment to the Courts of Justice Act has been included in this omnibus bill. It's just a little snippet of tort reform totally out of context, without looking at the entire system. If we want to do that, we should do that separately. We shouldn't throw this piece into this Bill 14. But there you have it. We've made some suggestions about how we would suggest that we deal with this, but it's been rejected.

I'm assuming that this motion is going to pass, that this section be included. I would just like to make some comments based on what Mr. Kolody has indicated in his excellent representation to us with respect to the issue of inflation. I would submit, if structured settlements are going to be required, that there be some meaningful degree of indexation applied to it, or else families that are

in this situation are going to suffer even more. I would urge the government members to take that into consideration.

The Chair: Any further debate?

Mr. Kormos: Recorded vote, please.

The Chair: Shall schedule A, section 18, carry?

Ayes

Jeffrey, Peterson, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: It's carried.

Mr. Kormos: Chair, if I may, we've got sections 19 and 20 left. We've got amendments—my apologies. The government is amending it.

The Chair: Mr. Zimmer, a government motion.

Mr. Zimmer: We're on 19, and I see there's an opposition motion also, on 19.1.

The Chair: That's after.

Mr. Zimmer: I move that subsection 127(2) of the Courts of Justice Act, as set out in section 19 of schedule A to the bill, be amended by striking out "chief administrator" and substituting "Deputy Attorney General."

This is a technical amendment. If you have any questions, Mr. Gregory can answer them.

The Chair: Debate?

Mr. Kormos: This is consistent with a whole lot of the other amendments, so I trust there isn't going to be a chief administrator anymore. This isn't a policy question as much as a political one. Why did the government abandon the creation of this office of chief administrator?

Mr. Zimmer: Sorry. I didn't hear you.

Mr. Kormos: My apologies. Why did the government abandon the creation of this office of chief administrator?

Mr. Zimmer: We feel the Deputy AG is the best person to do it.

Mr. Kormos: You didn't feel that when you wrote Bill 14. What changed your mind?

Mr. Zimmer stands mute. I'll ask if perhaps the bureaucrats could help us. Was there an articulable policy reason for abandoning chief administrator?

Mr. Gregory: Frankly, I think that it was a political decision based on the amount of opposition there was. Certainly in second reading debate they heard a great deal, compared to the advantages of doing it. I can't say any more than that.

Mr. Kormos: I'm sorry, Chair. We don't have legislative research. The opposition to the chief administrator—

Mr. Gregory: In the debates in the House, there was opposition to the creation of that position. I don't know anything further about the discussions.

Mr. Kormos: I never mentioned the chief administrator. Did you mention the chief administrator?

Mr. Runciman: In terms of his or her responsibilities, yes, but not criticism of the appointment.

Mr. Kormos: Interesting, huh?

1510

Mr. Zimmer: Perhaps, Mr. Kormos, I could add that the bill currently provides for the appointment of the chief administrator, who reports to both the judiciary and the AG. When we introduced the bill, input from the Deputy Attorney General and the Ministry of Government Services indicated that the position, with its dual reporting function, would be problematic. So we've eliminated it, and we think that's the best way to go.

Mr. Kormos: Now, that is a somewhat more fulsome explanation that I think I understand.

Mr. Zimmer: You trusted me when I gave you the short version.

Mr. Kormos: Well, the short version was the Simon and Garfunkel version, the Sound of Silence.

The Chair: Any further debate?

Seeing none, all those in favour? Carried.

Shall schedule A, schedule 19, as amended, carry?

Mr. Kormos: Whoa, whoa. What we talking about? Section 19?

The Chair: Is there any debate on section 19, as amended?

Interjections.

Mr. Zimmer: Is it 19.1?

The Clerk Pro Tem: That comes after.

The Chair: Shall schedule A, section 19, as amended, carry? Carried.

PC motion number 14.

Mrs. Elliott: I move that schedule A of the bill be amended by adding the following sections:

"19.1 The act is amended by adding the following sections:

"Early case resolution facilitation fund

"148.1 A fund known as the early case resolution facilitation fund, financed by the province, is established to cover the systemic expenses of pre-plea disclosure as a means of facilitating the early resolution of cases.

"Ontario court services prisoner escort and court security detail

"148.2 A program known as prisoner escort and court security detail, financed by the province, is established to provide escort and security services, by funding for local police services or by provincial provision of operations.

"Duty of lawyer

"148.3 A lawyer who receives a communication from his or her client about the commission of a crime and afterwards comes into possession of further information about the matter is required to disclose the further information to the authorities.

"Mandatory inquest

"148.4 If it appears that a person may have been killed or injured by a person who is on bail, on probation or on conditional release,

"(a) an inquest shall be held under the Coroners Act;

“(b) the judge or justice of the peace who ordered the release may be compelled to give evidence at the inquest; and

“(c) any crime victim with standing at the inquest is entitled to be represented by a lawyer at the expense of the province.”

Mr. Runciman: I'll speak to these amendments, Mr. Chair.

The resolution facilitation fund: Much of this is prompted by police concerns and the efforts to increase or actually require the police service to cover the expenses of pre-plea disclosure, which is a means of facilitating early resolution of cases. Certainly from the policing community we've heard great concern about this additional burden being placed on them. So we believe that there should be, at the very least, some sharing of costs to assist them in this responsibility.

Prisoner escort and court security detail: Again, it's regrettable that the chiefs decided to sit on their hands in terms of this hearing process, but this has certainly been, from the chiefs' perspective, one of the major concerns that they've relayed to governments over the past number of years. Local police services are incurring significant expenses in providing court security, and again I think that a very solid argument can be made that this is an expense, a responsibility, that should be at least shared in by the government.

The duty of lawyers: I've certainly had the wrath of the defence bar fall upon me for suggesting this, but this really arises from, as I mentioned, the Bernardo case and the failure of the lawyer representing Mr. Bernardo to make authorities aware of the infamous videotape that would have, if it had been revealed, ensured that Karla Homolka would still be incarcerated to this date. There was also another rather infamous case that I gather didn't get quite the public exposure, of a defence lawyer being aware that his client had moved a body, and that information was not made available to the appropriate authorities. There was a charge laid in the Bernardo situation and a review by the Law Society of Upper Canada, but at the end of the day nothing came from this. We believe that in the future there should be a requirement placed upon lawyers in situations such as this to disclose that kind of information to the appropriate authorities.

Mandatory inquests: Again, this is an attempt to try and place some responsibility with respect to someone being killed or injured by a person who is on bail, on probation or on conditional release. We may hear the parliamentary assistant say this is a threat to judicial independence. You know, it seems to me that there should be some accountability in situations like this. What this is doing is calling for a mandatory inquest in circumstances such as that and that the judge or the JP be compelled to give evidence at the inquest. Again, any crime victim with standing at the inquest should be entitled to be represented by a lawyer; it could be done through the victims' justice fund.

So what we're talking about here is accountability, transparency of justice, support for victims, and investi-

gations of failures of the justice system, which hopefully would provide recommendations to prevent future incidents. That, I think, covers all of those, but certainly if anyone has questions, we'll make our best efforts to answer them.

Mr. Kormos: Here we have an amendment that has some omnibus qualities in its own right, which causes the problem for me that the government's omnibus bills do.

I find the argument for an early case resolution facilitation fund compelling.

The court services prisoner escort and court security detail is imperative. Policing is the largest single municipal expense; right? That's the big-ticket item. Police forces across Ontario are hard-pressed to deliver core services because of their stressed resources. Politicians set the budgets, and politicians are loath to increase especially property taxes, because property taxes have just escalated. The province has got to pick up the cost of court security and prisoner escort. I find those two arguments compelling.

Now, duty of a lawyer: I reject that. I understand Mr. Runciman's concerns, and the case that he spoke of where a lawyer literally entered an already defined, as they say in the movies, crime scene and removed strong inculpatory evidence is one thing. The issue of privilege, though, is critical, in my view, to the legal profession, just as it's critical to the performance of our roles as MPPs. We enjoy very strong privilege here at Queen's Park. So I do not agree with Mr. Runciman and Mrs. Elliott on 148.3, talking about communications from clients. There are already exceptions to the privilege that put a lawyer into a position where he or she cannot claim privilege in the broader public interest. Mr. Runciman and Mrs. Elliott appear to be addressing that historic, fundamental issue of privilege.

1520

The other one, and that is compelling judges or justices of the peace to testify—look, legislators make the laws, judicial authorities work very hard applying the law. The oversight of judges is appeals court. I think this is very, very dangerous and it's also a double-edged sword because it can work both ways. It can cover both sides of the street. Obviously, I very much want to be clearly on record on these two issues. Mr. Runciman could say I'm a lawyer, and yes, I am and so I'm going to defend lawyers, but I'm not only not a judge or justice of the peace; trust me, Mr. Runciman, when I tell you I have no reason to defend them unnecessarily or in an unwarranted way. This is slippery-slope kind of stuff; it's very dangerous kind of stuff, in my view. I reiterate: Legislators make the law; judges, judicial authorities apply it. When they're wrong, they get appealed. When they behave outrageously, to the point of misconduct, they get yanked.

Mr. Runciman: Pretty rare.

Mr. Kormos: Well, they get yanked. I can't support this amendment for that reason.

The Chair: Thank you, Mr. Kormos. Any further debate?

Mr. Zimmer: With respect to Mr. Kormos's comments on the duty of a lawyer and when to disclose evidence and so forth and so on, he speaks eloquently, and I identify myself with him in that regard.

With respect to the other elements of the amendment, the difficulty here is that this opens up very complex questions of funding of court security. It opens up very difficult questions of the duties of lawyers, whether judges are compellable on all those issues. Those issues are best left to the law society and the courts to sort out.

With respect to the mandatory inquest comment or idea, the problem is that you're going to have inquests regardless of the need for the information that any inquest might produce. Those issues of whether there's an inquest are best left to the authorities that now make those decisions.

The Chair: Any further debate? Seeing none, shall schedule A, section 19.1 carry? All those in favour? Opposed? Lost.

Any debate on section 20? Next we have government motion 15. Mr. Zimmer?

Mr. Zimmer: Just a second; I'm missing a page here.

I move that subsection 20(2) of schedule A to the bill be struck out and the following substituted:

"Same

"(2) Sections 1, 3, 4, 8, 15, 16 and 19 come into force on a day to be named by proclamation of the Lieutenant Governor."

Those are technical amendments. The deleted provisions are removed from the list of provisions coming into force. If you have any questions, Mr. Gregory can help.

The Chair: Any debate? Seeing none, shall government motion 15 carry? All in favour? Opposed? Carried.

Any debate on section 20, as amended? Shall section 20, as amended, carry?

Mr. Kormos: Recorded vote.

The Chair: All those in favour?

Mr. Kormos: One moment. Can I request a five-minute recess pursuant to the standing orders, please?

The Chair: There will be a five-minute recess.

The committee recessed from 1525 to 1534.

The Chair: The committee is called back to order. All those in favour of section 20, as amended?

Ayes

Jeffrey, Lalonde, Van Bommel, Zimmer.

Nays

Runciman.

The Chair: Carried.

Mr. Zimmer?

Mr. Zimmer: Just before we start the next section, can somebody refresh my mind? Did we decide to sit till 4 or 5?

Mr. Kormos: Mr. Chair, if I may, Mr. Zimmer, the parliamentary assistant, agreed to sit from 10 a.m. to 4 p.m., with a one-hour break for lunch—as if there's very many of us who really needed lunch.

Mr. Zimmer: Some of us do.

Mr. Kormos: Give it a few more years, Mr. Zimmer.

The Chair: Is there any debate on schedule A, as amended? Shall schedule A, as amended, carry? All those in favour? It's carried.

Schedule B: The first one is government motion 16.

Mr. Zimmer: I move that section 1 of schedule B to the bill be amended by adding the following subsection:

"(2) The definition of 'review council' in section 1 of the act is amended by striking out 'section 9' at the end and substituting 'section 8.'"

Section 1 of the schedule would amend section 1 of the act by repealing the definitions of the terms "presiding justices of the peace" and "non-presiding justices of the peace," which are no longer necessary. All future justice of the peace appointments would be presiding appointments, i.e., could preside over Provincial Offences Act trials.

The Chair: Any debate?

Mr. Kormos: I find this interesting because, in a moment of reflection, I was going to suggest that we deal with schedule B in its entirety, but then I saw that the government had some 25 amendments—maybe 26 or 27. Since we had no submissions made to us with respect to justices of the peace other than by Her Worship Ms. McCallion, whose issue was the number of JPs—of course, this bill does nothing about guaranteeing adequate numbers of JPs—and Mr. Hong, who addressed a number of issues, including standards for JPs, not one of these government amendments is in response to anything put to the committee. So if they're not responsive to matters put to the committee, they're demonstrative of what happens when you call upon your drafting people and put them into impossible positions of having to cobble stuff together without the political masters having given the matter sufficient attention. But these are clean-up amendments.

Mr. Zimmer read this bill, Bill 14, over and over and over again before it was presented for first reading. Lord knows, once again, the Attorney General has sent him out. He's the rabbit car in this convoy. You see, if the bill, through some aberration, is successful—and I'm not talking about passing; I'm talking about having any positive impact out there—Michael Bryant, trust me, is going to take the credit. During his leadership campaign, when he's taking on Ms. Pupatello and probably half a dozen others, he's going to be touting—it sure as heck won't be the pit bull legislation, and it's unlikely to be 107, the Human Rights Commission abolition. It's even unlikely to be this, but he's desperately looking for something to put on his leadership resumé.

1540

The problem is, Mr. Zimmer's doing all the heavy lifting, and when the bill fails, as I predict it will—not that it won't necessarily pass the Legislature, but it's

going to create a horror show out there—do you think Bryant's going to be around to accept responsibility? His receptionist is going to be instructed to forward all media calls around the chaos out there to Mr. Zimmer. When it comes time to address public groups who say, "But wait a minute, the bill said access to justice. We thought that meant we were going to get some lower-priced help presenting our cases in Family Court, and we can't," it's going to be Mr. Zimmer. They're going to be wanting Michael Bryant there, right? Bryant's going to be schmoozing and wooing delegates, and it'll be Mr. Zimmer who gets sent out to take the heat. So I wish you well, Mr. Zimmer. You know now as a member of caucus that Kevlar is not inappropriate fabric for your suit jackets. Asbestos might become part of your attire as well.

Here we've got a bill where it wasn't even the first time around. Lord knows the government sat on it long enough—a year, a year and a half? The law society was all over Mr. Bryant. They wanted him to present legislation; they wanted to see what they had to work with. Don't forget, the law society didn't go to Mr. Bryant; Mr. Bryant went to the law society. Opposition members were all over him, proverbially, urging him to introduce the legislation so we could deal with it, so we could get it out there, so we could debate it, so we could discuss it and so we could get input. No, it's going to be crammed into a brief few days of public hearings. Notwithstanding there have been 100-plus submissions, there are 100-plus who still want to submit having the door slammed in their face by this Liberal government, which talks a big game about changing the nature of government or, as Mr. Runciman referred to earlier today, about democratic reform. Instead, committee members on the government side played musical chairs. They're in and out of this committee without any opportunity—three out of the five who are here today didn't hear a minute, a single word of submissions to the committee. Mrs. Van Bommel was the only one who sat through the whole hearings, and she, regrettably, isn't the parliamentary assistant to the Attorney General. She doesn't have his ear. She doesn't have the persuasive influence in the Premier's office that Mr. Zimmer does, for instance.

I just find it remarkable that we're here doing cleanup, sweeping up the mess. We're putting Humpty Dumpty back together when what we should be doing is developing a good paralegal regulation regime, one that has legitimacy with the public and with paralegals. Here in the context of schedule B, what we should be doing is hearing this government make a commitment to ensure that the shortage of justices of the peace is addressed promptly, because Lord knows there's no shortage of Liberal hangers-on who want the appointments and people who have been attending Michael Bryant fundraisers so as to get themselves on the short list. Those are my comments with respect to this amendment.

Mr. Runciman: I just want to say that one of the things that I—and I know Mr. Kormos has mentioned this before, and I think I have as well. We just received a

missive this morning from one of the municipal organizations urging us to expedite this legislation so that they can—they've been told that this is critical in terms of getting additional JPs into the field. It's just such a false notion, as we've indicated. I think you pointed out, Mr. Kormos, a few weeks ago that the Attorney General appointed six justices of the peace. We still have fewer justices of the peace working today than we had four or five years ago, and the reality is that this could be addressed now. To suggest to the municipalities that are being impacted by this that our hands are tied until the opposition caves on this legislation is truly offensive. I want to put that out there, that that's not the case, and hopefully the stakeholders who have an interest in this issue are paying some attention and realize that it could have been and should have been addressed some time ago by this current Attorney General.

We'll get into this later, so I won't spend a lot of time on it, but I think we have this element here about the part-time JPs—this doesn't deal with it, so I'll wait until we get into that particular element—as retired justices of the peace. We have never been given any indication of what that means, other than the fact that they would have that latitude. What does that mean in terms of the impact with respect to the shortage of justices of the peace? Hopefully we can have some kind of indication of that as we go forward in this discussion as well, but I doubt that we're going to have it. Of course, the suggestion that I made some time ago and that I've made for years is that we look at a core of part-time JPs who can provide services across the province in times of the night, day and week when certainly police services are having difficulty having their needs addressed at the moment.

Mr. Kormos: Further to Mr. Runciman's comments, and consistent with what I spoke to earlier today, please, I say this very carefully, anybody who has been told that Bill 14 is necessary to appoint justices of the peace has been lied to. Anybody who has been told that unless and until this bill is expedited there can't be any JPs to address the JP shortage has been lied to. Anybody who has said any of these things to anybody in the province, anybody who has said that Bill 14 has to be passed before more JPs can be appointed, is a liar. I say this very carefully: Anybody who says that unless the opposition parties expedite the passage of Bill 14, the government can't address the JP shortage, is a liar.

1550

The Chair: Any further debate? Seeing none, shall government motion 16 carry? All those in favour? Opposed? It's carried.

Shall schedule B, section 1, carry? It's carried.

Motion 17 is a government motion.

Mr. Zimmer: I ask for your indulgence. Your indulgence is—

Mr. Kormos: There are a lot of amendments and we understand—

Mr. Zimmer: What did we do with 1(1)?

Mr. Kormos: I think we just passed it. If I may, Chair, there appears to be perhaps a typo in the amend-

ment, but it will be dealt with at the end of the day when the bill is reprinted. What the government moved as 1(2) is really 1(1), unless it wants to change—Mr. Zimmer, a nice ordering would be to have the existing section 1 be 1(1), and then (2) be your amendment. That would make it neater, wouldn't it? Where are the legislative counsel folks?

Mr. Zimmer: It's—

Mr. Kormos: Wait a minute. How am I doing so far?

Ms. Joanne Gottheil: Yes, you're right.

Mr. Kormos: Thank you, ma'am.

Mr. Zimmer: Sorry, I had three voices I was trying to listen to, and I didn't hear any of them.

Ms. Gottheil: The way it works is that the existing section 1 in the bill will become subsection 1(1) because it's non-presiding, and "presiding" alphabetically comes before "review," and then the motion to amend the definition of "review counsel" will be 1(2), as indicated in the motion.

Mr. Zimmer: So we've done that one, then. Which one are we starting now—2(1)?

Mr. Kormos: Number 17, 2(2).

Mr. Zimmer: We're at 2(1), right? That's carried?

Mr. Kormos: No, 2(2).

Mr. Zimmer: Right, 2(2).

Mr. Kormos: Chair, if I may add, William Burroughs, the Beat writer, used to do what he called cutups. He would take a page and cut it in half vertically, and take another page and cut it in half vertically, and then mate the two, and that would become literary art: Burroughs's cutups: It seems to me that that's the approach that this government has to its amendments.

The Chair: I'm going to suggest that, it being close to 4 o'clock, we adjourn till tomorrow morning. This committee is adjourned till 10 a.m.

The committee adjourned at 1555.

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justice policy**

Access to Justice Act, 2006

**Comité permanent
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Loi de 2006 sur l'accès à la justice

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 21 September 2006

Jeudi 21 septembre 2006

*The committee met at 1005 in room 1.*ACCESS TO JUSTICE ACT, 2006
LOI DE 2006
SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006/ Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Welcome back. We're resuming our hearings on Bill 14. We're at schedule B, section 2: a government motion, number 17.

Mr. David Zimmer (Willowdale): Just before I start, Mr. Chair, this morning I distributed copies of my briefing notes to the members of the opposition, in response to Mr. Kormos's comment yesterday that that might make it easier for everybody to follow along. So you now have everything that I have, absent my personal handwritten notes on the material. You can follow section by section with the commentary that I would offer up on any section. You have them from B through to the end of the act.

Mr. Peter Kormos (Niagara Centre): I want to thank the parliamentary assistant for providing us with these. Obviously, I would have preferred the copies of the compendia that had Mr. Zimmer's handwritten notes, but I suppose we'll have to wait for his memoirs.

At the end of the day, when the parliamentary assistant, for instance, is asked in committee, "What does this amendment do," this is the sort of stuff that the PA is not going to inappropriately refer to. Frankly, it seems to me that, in general, when we're doing this sort of stuff, especially major bills—we've got a few more coming up in short order—it's not telling stories out of school. There's no state secret here. These are prepared by policy people, not by political people. They're prepared by civil servants who analyze the amendments objectively. So it seems to me entirely appropriate and, quite frankly, productive to share these things, and I think Mr. Zimmer should be commended for his vanguard position in this regard. Other parliamentary assistants who want to aspire to the competence level set by Mr. Zimmer would be wise to emulate him. Of course, it saves a lot of grief, because sometimes there can be grief in these committees.

The Chair: Thank you, Mr. Kormos.

Government motion number 17.

Mr. Zimmer: I move that subsection 2(2) of the Justices of the Peace Act, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

"Part-time justices

"(2) A person appointed as a part-time justice of the peace before subsection (1) came into force continues in office as a part-time justice of the peace.

"Change to full-time

"(3) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may change a person's appointment as a part-time justice of the peace to an appointment as a full-time justice of the peace.

"Consultation

"(4) Before making a recommendation under subsection (3), the Attorney General must obtain the recommendation of the Chief Justice of the Ontario Court of Justice on the matter."

The Chair: Any debate?

Mr. Kormos: This is interesting because, of course, one perspective is that part-time JPs as well as non-presiding JPs, especially the non-presiding—it was simply a safe place to put political hacks who were enjoying political appointments. And, since they weren't presiding, they weren't adjudicating, they weren't having to deal with legal arguments to any great extent. Of course, they still perform a very important function, and that is everything from signing informations for members of the public to the colloquial peace bond applications, search warrants, arrest warrants and similar sorts of things. So the historic role of the non-presiding JP was a very important one. Unfortunately—not always—it tended to be used as a dumping ground for people whom the government wanted to reward with JP appointments but couldn't trust to sit on the bench as presiding JPs.

1010

I appreciate that we're going to get to the retired JP per diems but this then raises the concerns that have been expressed by Mr. Runciman in particular about availability of JPs, in that all JPs are going to be full-time and all JPs are going to be presiding. Now, that doesn't mean that a presiding and full-time JP can't be assigned to be available for the purpose of swearing informations, but how—and if now is not the appropriate time to address this, we've got to deal with it at some point during the discussion of schedule B—does the government, with

this scheme, respond to the report by the Ontario Association of Chiefs of Police of at least two years ago now, which, although scientific, was very fulsome in terms of its anecdotal content about the unavailability of JPs?

There are times when you need a search warrant, yes; you need it at 3 in the morning or at 6 in the morning or on a Saturday or Sunday, as compared to regular 9-to-5 working hours. How is this going to address, if at all, that concern, that dilemma on the part of police who have to access these JPs? It's in the interest of public safety.

For instance, if the police have information—it's on people's minds that somebody's got a cache of explosives or firearms in their house and they're about to use them; I know this isn't the best legal example because perhaps there is other recourse, but the imagery is appropriate—and if they've got to be there at 3 a.m. because a person is planning on using them at 4 a.m., they need a JP at 3 a.m. to sign the search warrant, right?

That's what I put to the government in this regard. As I say, I commend Mr. Runciman's observations in this regard.

The Chair: Any further debate? Shall government motion, number 17, carry? Carried.

Shall schedule B, section 2, as amended, carry? Carried.

We're on to schedule B, section 3: a government motion, number 18.

Mr. Zimmer: I move that subsection 2.1(3) of the Justices of the Peace Act, as set out in section—

Mr. Kormos: Excuse me, my apologies. We've got 18 and 18.1. Replacement government motion or government motion? Is this like a multiple choice?

Mr. Zimmer: Actually, I didn't hear you.

Mr. Kormos: I don't know which motion the government is proceeding with.

Mr. Zimmer: It's 18.1.

The Chair: Government motion, 18.1

Mr. Kormos: Because I had 18, which of course came next.

Mr. Zimmer: I gave you all my material, but it's 18.1.

I move that subsection 2.1(3) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

“Composition

“(3) The advisory committee is composed of seven core members as follows:

“1. A judge of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice.

“2. A justice of the peace appointed by the Chief Justice of the Ontario Court of Justice.

“3. A justice of the peace appointed by the Chief Justice of the Ontario Court of Justice who is either the senior justice of the peace responsible for the Ontario native justice of the peace program or another justice of the peace familiar with aboriginal issues or, when the justice of the peace so appointed is not available to act as a member of the advisory committee, another justice of

the peace familiar with aboriginal issues who is designated by the Chief Justice of the Ontario Court of Justice.
“4. Four persons appointed by the Attorney General.”

The Chair: Debate?

Mr. Kormos: Once again, this is interesting. The government yesterday made references to the need to avoid political interference in the management of judges of the bench, yet what do we have here? We've got political appointments by the Attorney General. Again, that's exactly what they are. When the appointment comes through the government, it's called a political appointment. I just find it interesting.

And I find it interesting that there are no criteria. If we take a look at paragraph 3 of the proposed subsection (3), you've got justices of the peace familiar with aboriginal issues—fair enough. But then you've got “Four persons appointed by the Attorney General”—no criteria whatsoever. Shall those four persons be equal numbers of women and men? Shall those four persons represent, let's say, if you were to divide the province into four huge regions, the northwest, the northeast, the southwest, the central or southeast?

I find it very disappointing that there aren't guidelines. There could be efforts here to ensure regional representation. There could be efforts here to ensure gender representation. There could be efforts here to ensure representation by a member of the community with disabilities, for instance, which, it seems to me, has a strong interest in considering these things, because we're going to get to that later on in this discussion.

This government, in this bill, in schedule B, specifically overlooks an opportunity—you talk about access to justice—to ensure access to the bench and to the judiciary by persons with disabilities. I'm going to speak to that when we get to the section that talks about the accommodation of JPs after they've been appointed, should they become disabled after appointment but not before.

I think it's shameful that the government maintains the old political patronage standard, a pork-barrel standard—“Four persons appointed by the Attorney General”—and does not take advantage of an opportunity to ensure that the AG appointments serve a function beyond mere pork-barrelling. I'm going to oppose this amendment for that very specific reason.

This is a lost opportunity. For a government that talks a big game to the community of Ontarians with disabilities, that talks a big game to linguistic minorities, that talks a big game to ethnic Ontarians—and I know I don't use the word entirely accurately, but people know what I mean; we're all ethnic one way or another—what an opportunity to say here that one of these appointments shall be a person from the—again, I use the term very generically—multicultural community, so that those interests can be represented. What about seniors? What about women? What about persons with disabilities? The list could go on and on. No, I won't support this amendment for that very reason. Shame on the government.

The Chair: Thank you, Mr. Kormos.

Mr. Runciman?

Mr. Robert W. Runciman (Leeds–Grenville): I'll be brief. Another big game, Mr. Kormos, that this government plays is democratic renewal.

I think there's an important opportunity in this legislation. I've already spoken to this issue, but I think this is an opportunity, once again, to have the Legislature involved in this process—the elected officials, the assembly. The parliamentary assistant talked about politicizing this by involving the elected representatives of the people of this province. That's his criticism with respect to having these appointments reviewed by the justice committee, but he doesn't see any political downside to the Attorney General, a political person, retaining that authority. I think that's pretty difficult to justify in terms of the public, who are hopefully watching these proceedings. This is an opportunity. I think we have to get this Legislature more involved in these kinds of decisions, this kind of review. In terms of transparency, this is an ideal opportunity to ensure transparency in terms of the role of this group.

I once again encourage my colleagues across the floor to consider that position and consider the role that this committee can play in this process.

1020

The Chair: Any further debate? No debate. Shall government motion—

Mr. Kormos: Recorded vote.

Ayes

Fonseca, Lalonde, Van Bommel, Wong, Zimmer.

Nays

Kormos, Runciman.

The Chair: That's carried.

Next is government motion 19.

Mr. Zimmer If I haven't already said it, I'm not moving motion 18.

I move that paragraph 2 of subsection 2.1(4) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"2. The regional senior justice of the peace for the region or, when he or she is not available to act as a member of the advisory committee, another justice of the peace from the same region who is designated by the regional senior judge."

The Chair: Debate? No debate. Shall government motion 19 carry? Carried.

Next is government motion 20.

Mr. Zimmer I move that paragraph 3 of subsection 2.1(4) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "two" and substituting "five".

The Chair: Any debate? Shall government motion 20 carry? Carried.

Government motion 21.

Mr. Zimmer I move that subsection 2.1(5) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "In the appointment of members under paragraph 2 of subsection (3)" and substituting "In the appointment of members under paragraph 4 of subsection (3)".

The Chair: Any debate? If none, shall government motion 21 carry? Carried.

Government motion 22.

Mr. Zimmer I move that subsection 2.1(6) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "The members appointed under paragraph 2 of subsection (3)" and substituting "The members appointed under paragraph 4 of subsection (3)".

The Chair: Any debate? Shall government motion 22 carry? Carried.

Government motion 23.

Mr. Zimmer I move that subsection 2.1(7) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"Staggered terms

"(7) Despite subsection (6), the following applies to the first appointments to the advisory committee:

"1. Two of the members appointed under paragraph 4 of subsection (3) hold office for a two-year term.

"2. Two of the regional members for each region appointed under paragraph 3 of subsection (4) hold office for a one-year term."

The Chair: Any debate? Shall government motion 23 carry? Carried.

Government motion 24.

Mr. Zimmer I move that subsection 2.1(8) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out "paragraph 2 of subsection (3)" and substituting "paragraph 4 of subsection (3)".

The Chair: Any debate? Shall government motion number 24 carry? Carried.

Government motion number 25.

Mr. Zimmer: I move that paragraph 2 of subsection 2.1(12) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"2. It shall develop the application procedure and the general selection criteria and make information about them available to the public."

The Chair: Any debate?

Mr. Kormos: I'm curious, appreciating that there's a requirement to advertise annually—and I appreciate we're not speaking to the whole of subsection (12), but this is the only chance I have to speak to subsection (12) independent of the other subsections—and I also find interesting the respective reports by the advisory committee. "Not qualified," I understand that. I presume that means you don't meet the criteria. I don't know. Because we don't know whether only people who meet the criteria will even be considered. I'd like some help in this regard,

if there is help. Do you understand what I'm saying? It's one thing to meet the bar and then to say "not qualified," because that then is a subjective evaluation. So what I would like to know—and I'm going to try to be brief—is, does "not qualified" here mean does not meet the bar, or meets the bar because there wouldn't be any report or any response but is otherwise not qualified?

The Chair: Can you please state your name for the record?

Ms. Laura Metrick: Laura Metrick, counsel with the Ministry of the Attorney General. Meets the bar, but is otherwise not qualified.

Mr. Kormos: So that makes it more interesting. There are basically three categories that people can fall into who are otherwise qualified, although we don't want to say qualified because we use the word "qualified" in terms of the report.

I just find it interesting. Will there be and is there in the bill an opportunity for the public to determine what "not qualified" would mean as compared to qualified or highly qualified? In other words, how do people assess their initial eligibility? Not the bar; the bar, I think, is reasonably clear—not really clear, because there's some stuff subject to regulation, but reasonably clear. So one meets the bar, passes the bar. Where, if anywhere, are those three categories going to be ranged? It's sort of like A, B and C in grading in high school or something. Quite frankly, in As, Bs and Cs, there's a little blurb beside it saying, "C means substantial knowledge of course material, B means a very good knowledge of course material, A means an exemplary knowledge of course material." Where are we going to see that gradation?

Ms. Metrick: It's left to the committee to determine the skills, abilities and personal characteristics in terms of what is desired in a justice of the peace. How the committee will work is that there will be the core that will develop the application form and that sort of thing in terms of general practices and procedures, and then there'll be the regional committees that will be aware of and sensitive to regional needs. So there will be the general skills, abilities and personal characteristics but, at the same time, because the committees are regional in nature—though in considering and classifying there'll be some core members for consistency, as well as regional members to take into account regional variation across the province. So it'll be left to the committee to determine the skills, abilities and personal characteristics that are required.

Mr. Kormos: I find this troubling, because if the goal is to professionalize the justice of the peace bench—I hope that's not an inappropriate way of describing it—and to upgrade it and to make it transparent, it seems to me that there should be some setting, in a very general way, of what constitutes "not qualified," "qualified" and "highly qualified" so that applicants know and so that the public knows.

I am also troubled by qualified versus highly qualified, because I know that both qualified and highly qualified are eligible to be on the short list to be presented to the

Lieutenant Governor in Council. How does the public know whether or not they're appearing before a JP who is highly qualified, as compared to one who is merely qualified? I would like to know that the dentist doing my crown or whatever was highly qualified, as compared to merely scraping by in his or her dental exams and practical work experience.

1030

Ms. Metrick: In response to your earlier question, the committee will be required to make all of the information publicly available. In terms of the personal characteristics, the skills and abilities and so on, that will be required to be made publicly available, as well as the application procedure. That information will be available to the public, so they will have a sense of the skills and abilities and personal characteristics that are required of a justice of the peace.

Mr. Kormos: That's good, in and of itself, and interesting, but we still have a problem. I'm in front of a JP. Did he or she just barely make it, or was he or she considered at the top of the pack?

One of the problems, in my view is—and it may not have been the intention of the drafters—this is where the government is buying wiggle room in terms of patronage, in terms of pork-barrelling. As long as somebody passes the bar, is at least qualified, they are eligible, then—not necessarily will they be placed on the short list, but they're eligible to be placed on the short list. Am I correct? Not every person who is deemed qualified or highly qualified is going to be submitted to the LG in Council.

Ms. Metrick: Right. They would be submitted to the Attorney General for consideration, and then he could recommend to the Lieutenant Governor in Council.

Mr. Kormos: So help us. Is everybody who applies, who is assessed and who is deemed at least qualified going to be submitted to the AG?

Ms. Metrick: Yes, if they're classified as qualified or highly qualified, which, again, doesn't mean they meet the minimum bar; it means they're assessed to be qualified or highly qualified, and then those are provided to the Attorney General, who then makes a recommendation.

Mr. Kormos: So depending upon the vacancy, its location and how many people apply, there could be a list of two presented to the Attorney General or a list of 20.

Ms. Metrick: Yes. It could vary.

Mr. Kormos: Wow. Think about that, Chair. What wiggle room. In other words, the committee isn't being told at any given point in time, "Give us your three best," because I presume there are ways of doing it. You've got managerial MBA types who can create scales where you rate people and score them and where you can quantify these things, and that's fair enough.

It isn't a matter of the AG being given a list of the three best for one vacancy, but it's a matter of the AG being given a list of as many 20, maybe 30, maybe 40 so that you can then find out who's been making their annual contribution to the Liberal Party of Ontario or who's the friend of the Premier's brother-in-law or sister-

in-law. That's not very transparent; that's not much of a reform, is it? The JPs have been sort of the last bastion of the coarsest of political patronage. Hmm. That's interesting stuff.

I'm not going to support this section when we get around to voting this section. Well, I'm obviously not going to support it, because I have concerns because of the two AG appointments and the lack of specificity in ensuring that they come from respective communities, the very general sort of diversity of the population, overall gender balance.

Hmm. This schedule becomes less impressive every minute and demonstrates itself to be more of a little bit of a—Mr. Runciman talks about democratic reform as being a sham. It looks like the JP reform may be a little bit of a sham here too. Interesting stuff. Smoke and mirrors, yeah. You wonder what they're smoking.

The Chair: Any further debate? Seeing none, shall government motion number 25 carry? Carried.

Government motion number 26: Mr. Zimmer.

Mr. Zimmer: I move that paragraph 5 of subsection 2.1(12) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"5. It shall review all applications and evaluate them at least once each year or on the request of the Attorney General and may interview any of the candidates."

The Chair: Any debate?

Mr. Kormos: I appreciate the stated purpose of the amendment, but what is absent in the existing section that suggests that the committee wouldn't have the authority to interview candidates? What are we amending here?

Ms. Metrick: There wasn't anything absent. In the original drafting, the understanding was that it was implicit in terms of interviewing, but in further discussions with legislative counsel, it was thought that it may be preferable to make it explicit, and so the decision was made to make it explicit.

Mr. Kormos: Fair enough.

The Chair: Any other debate? Shall government motion number 26 carry? Carried.

Motion 27 is a PC motion.

Mr. Kormos: On a point of order, Mr. Chair: Gosh. I'm wondering, Mr. Zimmer, if one of your staff could help get me a clearer copy of the compendium, because the references to the Tory motion are all darkened here. I can't read them.

Mr. Zimmer: They're just darkened so I don't miss them.

Mr. Kormos: It's not highlighted on my version. They're just darkened, as if to obliterate them. We've got a clear copy? Is yours darkened, Mr. Runciman?

Mr. Runciman: Yes, it's darkened too.

Mr. Kormos: I can't read the darn thing.

Look, folks. You see, they've darkened them. Chair, see?

Mr. Zimmer: Let me see yours and I'll see if it's any darker than mine. I can read mine.

Mr. Kormos: Well, you're wearing your reading glasses.

Mr. Zimmer: Mine's darkened and I can read it quite clearly.

Mr. Kormos: It's very dark.

Chair, to be fair, this could just have been a little printer gremlin thing, because I'm sure it won't happen again throughout the compendium.

The Chair: Thank you. Mr. Runciman—

Mr. Kormos: Because, Chair, I know that the government has an open mind—the government members here—notwithstanding that we have yet two new government members who have never sat before on this committee during its consideration of Bill 14. Mr. Lalonde was here for a little while yesterday, but three of them who haven't heard a single word of submissions to the committee—how does that show any respect for the people who worked incredibly hard, either advocating for or against the bill, and who came before this committee to make presentations, expecting their presentations not only to be heard but to be considered during these deliberations? Shame.

The Chair: Mr. Runciman?

1040

Mr. Runciman: I move that paragraph 6 of subsection 2.1(12) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"6. It shall conduct the advertising and review process in accordance with general selection criteria, including the assessment of candidates' skills and abilities, their familiarity with the criminal justice system, law enforcement and issues relating to victims of crime, their community awareness, their personal characteristics and the recognition of the desirability of reflecting the diversity of Ontario's population in appointments of justices of the peace."

We have mandatory considerations incorporated into the bill regarding linguistic duality, diversity, gender. There are no considerations here in terms of qualifications with respect to familiarity with and understanding of the justice system—no recognition of the importance and desirability in terms of either a law enforcement or criminal justice procedure dealing with the victims of crime, expertise in that area. I think this is a serious weakness.

Many people have been very critical, including legislators, in the past few years with respect to some of the decisions taken by justices. I think all three governments can bear some responsibility in terms of the background, training and readiness for taking on some of these very important responsibilities that JPs face. I think it's critically important that we recognize in the appointments process background in these areas, and not just be politically correct when we're talking about linguistic duality, diversity and gender as the only mandatory considerations. That is the politically correct route, but I don't think it helps us in terms of ensuring that we're appointing the right people to these very important positions.

The Chair: Any debate?

Mr. Zimmer: The difficulty with the amendment is that this is going to add to qualification of the candidate for justice of the peace a pre-existing knowledge of criminal law and law enforcement. Essentially, that's contrary to the spirit of a lay bench, so we want to encourage people with criminal law backgrounds and appreciation of justice issues, but also those many talented people who don't have any technical or specific background in that. The point is that the new justices will be trained extensively in criminal law, criminal procedure and criminal issues once they're appointed and before they take up their duties.

The Chair: Any other debate?

Mr. Runciman: It doesn't exclude anyone. I'm talking about mandatory considerations. We could also, I suppose, suggest that they have the capacity and inclination to say no to frivolous or procedurally abusive adjournment requests. There's a whole range of things here that we could look at, but I think having experience in this field is critically important. And certainly no one is being critical of additional training in this area, but if you have someone who's spent 20 or 25 years working in the criminal justice system, working with victims of crime, working in law enforcement, all of those things, from my perspective, have to be enormously helpful to one assuming those onerous responsibilities.

The Chair: Mr. Kormos.

Mr. Kormos: I have some sympathy for the motion. I think one of the interesting observations is that the general view is that a person's prior legal experience in terms of, let's say, the provincial court bench is a very minimal predictor of what their trend or tendency is going to be when they're on the bench. Crown attorneys who have been some of the toughest prosecutors you've ever found, real law-and-order types, have ended up being some defence lawyers' dreams when they're sitting as judges. Similarly, very, very skilled defence lawyers who have wrestled not-guilty verdicts out of some of the most astounding of fact situations have ended up being some of the most conservative, if I can put it that way, judges. I think that's a fair observation. In my view, there's no predictability based on a person's background. It really rests on the training.

But having said that, I don't currently—and I find interesting Mr. Zimmer's commitment to a lay bench. The government's never talked about the reason for that commitment, other than that it—I just don't know. The government has never talked about the reason for that commitment. It advocates a lay bench, but it seems to not advocate lay advocacy. Think about that. Here the government is saying it's fine that we can appoint people with no prior legal experience or criminal experience as justices of the peace, but whoops, when it comes to paralegals, it's going to set standards, which is fair enough, but then it's going to exclude paralegals, even if they have training in certain areas of law like family law, from acting for litigants in Family Court even at the most fundamental level. That's a little bit of a contradiction

here that I find interesting—not the first contradiction I've encountered at Queen's Park or with this government.

So I have some sympathy. I'm not going to be supporting this section. I don't think it's ready to go yet. I think there should be some further debate about whether or not the Legislature in the act should be dealing with the whole issue of criteria and eligibility. Part of my problem is the qualified/highly qualified, the two levels of qualification, because that's dealt with very specifically later on in schedule B.

I don't know why the government is dismissing Mr. Runciman so readily when what he does is raise the need for some more thorough consideration of exactly what it is we want those people who are appointed as JPs to have as—we want them to have something in their background, or else we wouldn't be examining their backgrounds, would we, Mr. Zimmer? We wouldn't be looking at their qualifications. It leads me to express concern about whether or not the predominant qualification is still going to be where your political allegiances lie. That's where it takes me. I'm sorry to be so cynical; I'm not usually like this. But it causes me concern.

The Chair: Thank you, Mr. Kormos. Any other debate? Shall PC motion—

Mr. Runciman: Recorded vote.

Ayes

Runciman.

Nays

Fonseca, Lalonde, Van Bommel, Wong, Zimmer.

The Chair: That's defeated.

Government motion number 28.

Mr. Kormos: Chair, I've turned the page on the compendium that Mr. Zimmer was so generous to provide, and the text is clear. It's not obscure. Thank you very much. It must have been just that old printer's gremlin in there.

Mr. Zimmer: I move that subsection 2.1(13) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

“Quorum

“(13) The quorum for decisions under paragraph 8 of subsection (12) is two core members and seven regional members from the region for which an appointment is considered.”

The Chair: Any debate? No debate. Shall government motion number 28 carry? Carried.

Government motion number 29.

Mr. Zimmer: I move that subsection 2.1(14) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out “If a vacancy occurs among the members appointed under paragraph 2 of subsection (3)” and substituting “If a

vacancy occurs among the members appointed under paragraph 4 of subsection (3)."

The Chair: Any debate? Mr. Kormos.

1050

Mr. Kormos: This is the only chance we have to talk to the vacancy subsection, because you know there's a problem out there—police services boards, amongst others—when this government's been dragging its heels on appointments: "A new member may be appointed under the applicable provision for the remainder of the term." Is that as simple as what it appears to be, that appointments can be made for the balance of a term, as compared to appointments for a full term, if there's an interrupted term?

Ms. Metrick: Yes, a further balance of the term for members on the committee.

Mr. Kormos: Fair enough. Thank you.

The Chair: Shall government motion 29 carry? Carried.

Government motion 30. Mr. Zimmer.

Mr. Zimmer: I move that the French version of clause 2.1(15)(a) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

"(a) il est titulaire d'un grade universitaire;"

The Chair: Any debate?

Mr. Kormos: I don't have the French version of the act in my material here. Can we get a Queen's Printer copy? Is there a Queen's Printer anymore? I'm using the one the government thoughtfully provided us.

Mr. Zimmer: I'm wondering, Mr. Chair, just while you're doing that, if we could have a two- or three-minute health break.

Mr. Kormos: I quit smoking years ago now, Mr. Zimmer. I don't need any break.

Mr. Zimmer: No, I don't smoke.

The Chair: A five-minute recess.

The committee recessed from 1052 to 1058.

The Chair: We're continuing our clause-by-clause consideration of Bill 14. We're now at government motion 30. Mr. Zimmer.

Interjection.

The Chair: I apologize. The motion has been moved. Is there any debate? Mr. Kormos.

Mr. Kormos: I'm not being adversarial here, I just find it interesting. The current language refers to "un diplôme universitaire," a university diploma; I brought the Larousse here, the French-English dictionary—not the biggest one, but not the smallest one either. Then I looked up "titulaire d'un grade universitaire." Again, far be it from me to suggest I'm an expert in the French language in terms of the application of the words. What's the difference? I looked up "titulaire" and "universitaire," and when you take the words in isolation, there's nothing there that makes a profound distinction to me. Is the distinction "diploma" as it applies to community colleges versus universities?

Ms. Metrick: Legislative counsel is the one who suggested this change, so Joanne—

Ms. Joanne Gottheil: I believe it's just a question that originally the word was "diplôme," and now it's changed to "grade." "Grade" is a better translation of "degree," rather than "diploma."

Mr. Kormos: Really?

Ms. Gottheil: Again, I'm not the expert in the French language, but this is what our translators have told us.

Mr. Kormos: And I'm not either, again, by any stretch. "Grade," in a university context, qualification—

Mr. Zimmer: I'm not bilingual, but I have confidence in the opinion just expressed by the legislative counsel that the translation used here is a better word to use.

Mr. Kormos: Okay, but—

The Chair: Mr. Lalonde.

Mr. Kormos: Ah, here we are.

Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell): The way it is printed in there is, "Il possède un diplôme universitaire." Now we're saying, "Il est titulaire d'un grade universitaire." So it's just the wording, really. It means "Il détient"—il possède, il détient—"un grade universitaire." Il détient un certificat universitaire. Donc, it's just housecleaning.

Mr. Kormos: But help us to understand the difference between the two phrases.

Mr. Lalonde: The two really mean about the same thing. "Il est titulaire" ou "Il détient," au lieu de dire "Il possède," is just a house—

Mr. Zimmer: What might an analogy be in English?

Mr. Kormos: What might an analogy be in English?

Mr. Lalonde: "Il possède" means "He has." The other one, "Il est titulaire," "il détient"—he has a graduation certificate.

Mr. Kormos: Okay. Look, at the end of the day, here we are—

Mr. Lalonde: It means about the same thing. "Il détient," he has a certificate, but this one means—you could have a certificate, really, that wasn't awarded to you. Today we're saying, "Il est titulaire": il est la personne qui a obtenu le certificat, le grade universitaire. I could come to you and say, "I have a certificate." It doesn't mean that it is my certificate. Today we say, "You are the one who was graduated. We have the certificate that shows that you are the graduate of the university." It's just wording.

Mr. Kormos: Thank you very much. Where's the English-language version here?

Mr. Lalonde: In English, "has a university degree." Exactly. He has a university degree. And in French, he's got his university certificate, but it doesn't mean it's his own.

Mr. Kormos: Yes, but if I have Mr. Zimmer's university degree, his master's in philosophy, and I'm holding it in my hand, the argument seems to be—I hear your argument. He wants to avoid me saying, "Yes, I've got a degree here. It just doesn't happen to be mine, but what the heck, let's go with it." It's Mr. Zimmer's.

Let's go with it, folks. These are always interesting.

The Chair: Shall government motion number 30 carry? Carried.

Government motion number 31.

Mr. Zimmer: I move that clause 2.1(15)(b) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be struck out and the following substituted:

“(b) has a diploma or advanced diploma granted by a college of applied arts and technology or a community college following completion of a program that is the equivalent in class hours of a full-time program of at least four academic semesters;

“(b.1) has a degree from an institution, other than a university, that is authorized to grant the degree,

“(i) under the Post-secondary Education Choice and Excellence Act, 2000,

“(ii) under a special act of the assembly that establishes or governs the institution, or

“(iii) under legislation of another province or territory of Canada.”

The Chair: Any debate? Mr. Kormos.

Mr. Kormos: This is part of the problem—and I appreciate the effort—in having a lay bench and then trying to articulate the standards, because then, of course, we’ve got clause (b): a community college diploma from “a program that is the equivalent in class hours of a full-time” two-year program. That seems to be four academic semesters, right?

“Has a degree from an institution, other than a university”—this is the interesting part, because this is the new stuff, right? The first part is not new stuff. Colleges of applied arts and community colleges are covered, but then “a degree from an institution, other than a university....” We have community colleges and we’ve got universities, so give us a “for example,” please.

Mr. Zimmer: Perhaps I can help here. There’s a difficulty out there generally with assessing any kinds of qualifications, so the Ministry of Training, Colleges and Universities maintains an office that defines and clarifies equivalency among certificates and degrees—not only the degree itself but also the various institutions and so on. What clause (b.1) does is recognize the updated definitions of the Ministry of Training, Colleges and Universities respecting community colleges and degree-granting institutions other than universities. The fact of the matter is, unlike lawyers applying, many of the folks applying for JP positions have educational certificates from a variety of institutions. This is a way of just sorting out what that certificate or graduation diploma means.

Mr. Kormos: Thank you, and I hear you. But with respect, I know what community colleges are and I know what universities are. What’s left?

Mr. Zimmer: Just to give you an example, in the riding of Willowdale there’s a college called Tyndale College. It’s a faith-based college, and it grants certain degrees and certificates and so on. If you wanted to know just what their diplomas and degrees meant in terms of equivalency, you could check with the ministry, and they have an equivalency. For instance, I know from personal experience that the University of Toronto gets applications from people all around the world. The challenge for the university is what those diploma or certificate

criteria mean, and the university has an office that assesses equivalency. It’s the same sort of exercise here, so that people aren’t frozen out of the application process because they don’t meet the technical qualifications. You may have an immigrant who’s now a Canadian citizen but whose training is in another country, and that’s got to be assessed in terms of equivalency. That’s what this is all about.

Mr. Kormos: You’re not talking about those correspondence courses on the backs of matchbooks.

Mr. Zimmer: That would be something that would be sorted out in the equivalency analysis.

Mr. Kormos: You’d consider those? That’s interesting. Fine. But I hope when we get to schedule C that the same sort of latitude and flexibility is being considered for people who propose to be licensed as paralegals.

1110

Mr. Zimmer: Do you have anything to add to my comment?

Ms. Metrick: There are degree-granting institutions other than universities. They’re private institutions, and they are listed under Post-secondary Education Choice and Excellence Act; for example, Knox College and Iona College. They’re listed in legislation, reviewed by the Ministry of Training, Colleges and Universities and felt to be qualified to grant degrees, yet they are not universities and they’re not community colleges. So that’s what we’re talking about here.

Mr. Kormos: Thank you, that’s very helpful. Mr. Zimmer, you should have let her go first.

The Chair: Shall government motion 31 carry? Carried.

Government motion 32.

Mr. Zimmer: I move that subsection 2.1(17) of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by striking out “clause (15)(a), (b) or (c)” at the end and substituting “clauses (15)(a) to (c).”

This is just housekeeping.

The Chair: Any debate?

Mr. Zimmer: Carried.

The Chair: Shall government motion 32—

Mr. Kormos: One moment. Was there a vote? There wasn’t a vote yet.

The Chair: Any debate?

Mr. Kormos: Yes.

The Chair: Mr. Kormos.

Mr. Kormos: No. Any debate?

The Chair: Any debate? Shall government motion 32 carry? Carried.

PC motion 33.

Mr. Kormos: Chair, I can’t read it again.

The Chair: Well, you may want to flip the page again.

Mr. Kormos: No, no. Look, it’s all been darkened.

The Chair: You may want to flip the page and the same thing might happen.

Mr. Kormos: If I flip the page, it's a Liberal motion, and that's not the one we're dealing with now. This is frustrating.

The Chair: Mr. Runciman.

Mr. Runciman: I've lost my place in all this paper. What number is it, 33?

I move that section 2.1 of the Justices of the Peace Act, as set out in section 3 of schedule B to the bill, be amended by adding the following subsection:

"Approval by standing committee on justice policy

"(18.1) The Attorney General shall consult with the assembly's standing committee on justice policy before recommending a candidate described in subsection (18) to the Lieutenant Governor in Council, and shall recommend the candidate to the Lieutenant Governor in Council only with the approval of the standing committee."

I've spoken to this on a number of occasions in terms of involving the members of the standing committee and the Legislative Assembly in this review process. I think it fits in very much with the view that the governing party expressed in terms of democratic renewal and democratic reform. In reality, we have yet to see the rhetoric have any meaningful impact in terms of changes in the way government operates. I think this is an opportunity for us as legislators and as members of the committee reviewing this legislation to put forward an initiative that would be sending all of the right messages to the people of this province, who have many concerns surrounding the justice system, that their legislators are going to play an active and meaningful role in the future.

The Vice-Chair (Mrs. Maria Van Bommel): Any further debate?

Mr. Kormos: I want to make it clear that I very specifically disagree with this proposition. This is precisely what I've expressed concern about in terms of the ongoing AG direct appointment role—for instance, the political appointment process and the risk of political patronage. I don't believe that the Legislature has any business whatsoever vetting or screening judges or justices of the peace. I think and believe strongly that we have to develop an integrous and strong and truly transparent system of ensuring that very qualified people are appointed to these very, very important positions. We have to ensure that the appellate courts are equipped to deal with errors made by lower courts in the event that they're made, but the proposition of vetting in any way—this bill would actually require the approval of the committee, but the Americanization of the appointments process to the extent of even interviewing these people, with an effort, obviously, in a partisan context—especially in a partisan context—is entirely inappropriate, and quite frankly it is an attack on the independence of the judiciary, which is something that is, oh, so important. Just ask folks in those countries that don't have an independent judiciary.

The Vice-Chair: Further debate?

Mr. Runciman: Recorded vote.

The Vice-Chair: Hearing none, I'm going to call the vote. Shall motion 33 carry?

Ayes

Runciman.

Nays

Fonseca, Kormos, Lalonde, Wong, Zimmer.

The Vice-Chair: That's lost.

Shall schedule B, section 3, as amended, carry? Any debate?

Mr. Kormos: Yes, ma'am. I have serious concerns about components of section 3. I've expressed those during the course of consideration of any number of amendments. I won't repeat those concerns. We will have an opportunity as we move on to address those further.

I want to very specifically talk about subsection 3(18). That's where the issue about "qualified" versus "highly qualified" is put into a nutshell:

"(18) The Attorney General shall recommend to the Lieutenant Governor in Council for appointment as a justice of the peace only a candidate whom the advisory committee has classified as 'qualified' or 'highly qualified.'"

We still don't know what the distinction is between the two. Is it like the difference between getting a bare pass out of a high school grade as compared to being on the honour roll? Is it as simple as that, or are there other considerations? It seems to me that only highly qualified people should be being presented for consideration for appointment to these benches. Why would we accept anything less than highly qualified people? You're a little bit qualified, you just barely made it, but you happen to be a political friend of the government of the day? Because that's what this speaks to.

I reject absolutely the gradation of "qualified" and "highly qualified." This is the barn door being opened for pork-barrelling, for political patronage, because if you've managed to squeak through and you're competing against highly qualified people but you're a Liberal hack, in the context of 2006, you get the appointment. That's not JP reform, Mr. Zimmer. That's not transparency, that's not democratic renewal, and that's not depoliticizing the appointments process. It seems to me that only people who are highly qualified should be considered, and then it seems to me that the residual discretion on the part of the AG and the Lieutenant Governor in Council should be exercised in a very clear way. In other words, there should be some clear understanding of why an Attorney General would pick one highly qualified applicant versus another highly qualified applicant, and that's where considerations around cultural diversity, gender balance and the presence of persons with disabilities on the bench may well come into play. But we don't articulate that here either.

1120

The fact is that at the end of the day, appointments of JPs are going to be a dirty little political cabinet activity

and people are going to be lobbying for their political buddies. There will be from time to time a prominent partisan from a non-governmental party appointed so the government can defend itself against finger-pointing and accusations of pork-barrelling, of patronage.

This is just bizarre. For the life of me, why would the government want to even know the names of people who are merely qualified when there are others who are highly qualified? We should be looking for the very best. This is a serious problem that all of us—not all of us, because of course three members here on the committee have only just shown up today—at one point or another have expressed some interest in, if not concern about.

No. I'm not going to support a section that gives the Attorney General the opportunity to appoint a merely qualified person when there are highly qualified people, because that opens the door to that appointment being based on considerations other than qualifications, and then what's left?

This is what it does: When you have qualified as well as highly qualified people being presented, that means there are going to be considerations other than qualifications. And don't tell me there aren't enough highly qualified people for the Lieutenant Governor in Council. That's the cabinet. Let's not sanitize this. That's the Premier's office. It's not Mr. Bartleman sitting there saying, "Oh, well, which appointment should I make today?"

Yes, I should stop using that language. The back room—the very, very back room—of the Premier's offices is where these decisions are made, because there's a lineup a mile long of people vying for these positions, many of them for all the wrong reasons. There are some dogs out there sitting on the JP bench, and they got there because of political patronage. If people want to challenge me on that, I can start naming names. There are some real barkers, and again, it's not hard to connect the dots. The ones who should be leashed and muzzled are the ones, inevitably, who are there because of their political connections rather than because of any competence, skill, interest or desire to work within their community and within the justice system.

This isn't good policy, and we've had a paucity of discussion in the committee about justices of the peace and about this schedule. The government would not allow this committee the opportunity to defer clause-by-clause so we could consider inviting some expertise to the committee. Remember my motion yesterday? The government rejected it. I think we have to hear from some of the JP bench, from some of the bar, from some of the people who are out there seeing what's happening when you've got political appointments.

This bill will not stop the political hacks from being hand-picked, and some of the political appointments will be highly qualified; some will be merely qualified. Some will have just made it. Right?

What was a passing grade in high school, 60%? I can't remember. If you got 59, you failed by one percentage point, but if you got 60, you made it.

There are going to be people being appointed by Premiers' offices, because that's where the decisions are

made. They're made in the most sordid way because they're made by the gatekeepers, the proverbial and sometimes oxymoronic brain trust in the Premier's office. What did Bill Murdoch refer to them as, back in government days? I can't remember. I think it's just as well. But it's these sorts of people who are going to be making these sorts of decisions, who are going to be doing the lobbying, who are going to be doing the leaning on the political staff—wrong, wrong, wrong. That's not how you upgrade that bench. That's not how you improve public confidence. In this regard, I share Mr. Runciman's concerns about the JP bench in terms of bail hearings and so on, because there is a serious erosion of public confidence in it. As you know, Madam Chair, as a politician, perception is reality, and when there isn't public confidence in that bench we have a serious problem, socially, when there isn't confidence in the justice system.

I, of course, am going to be recommending that schedule B not be passed so that it can remain available to be reintroduced on its own. You'll recall at the very introduction of Bill 14, at least at the time or shortly thereafter, both opposition parties expressed concern that we had this omnibus bill and we very much wanted to deal with the paralegal regulation as a stand-alone. The JP so-called reform has gotten very short shrift.

I'm not impressed. I don't think the public will be particularly impressed either. This is phony stuff. It's fake reform. This is so nasty because what it does is, it's going to allow the perpetrators of crude political patronage to hide behind a JP appointments advisory committee that will be allowed to present the names of merely qualified people, people who just barely make it. Those aren't the sort of people we want on our benches, and that's wrong.

Thank you kindly, Chair. I will certainly not be supporting this section.

The Chair: Mr. Lalonde?

Mr. Lalonde: I don't think Mr. Kormos really meant what he just said, that there are dogs sitting on the justice bench.

Mr. Kormos: Okay, now I name them.

Mr. Lalonde: Really, any previous government was serious when they appointed justices of the peace. There are qualifications to meet, but when you refer only higher qualified people—subsection 2.1(18) is really clear: "a candidate whom the advisory committee has classified as 'qualified'". When we say "qualified," this is according to section 15. There are some qualifications written into the bill, so really, anybody who is appointed, it's because he has some qualifications to become a justice of the peace. And after the appointment, they have training to follow before they become a justice of the peace. So I don't think you were serious when you said that there are some dogs sitting on the justice bench.

Mr. Kormos: I've already had occasion to name some of the outstanding members of that bench that I've had the pleasure and opportunity to know and to work with, people like Tony Argentino, people like Gabe Tisi,

people like Morley Kitchen. I've also had the displeasure of observing and witnessing justices of the peace who had no knowledge of the law whatsoever, whose motivation was purely the prestige and status of the job, who saw the job as an early retirement because they were failed in other aspects of their lives, who wouldn't know a criminal code if it fell on them and hit them on the head, whose political partisanship continued after their appointment to the bench in such a way that the community would be hard-pressed to have any real confidence in their ability.

1130

I've had occasion to witness JPs who, as political appointments, were mere servants of the police, who would sign anything that the police put in front of them, especially back in the old days of piecework, where you got paid—what is it?—a buck an information. I watched one JP sign a remand order for an accused before any arguments had even been made regarding the accused's eligibility for release and bail. I've heard justices of the peace—well, one in particular—convict a person and then suspend sentence, saying, "And if I had not had a reasonable doubt, I would have fined you." These are the sort of things—training sessions? What, like the drunk-up—was it down in Windsor?—where the one JP sexually harasses a female counterpart? Training sessions, my foot. You want to read about that? Read about that in the disciplinary report that was made.

Mr. Lalonde: That's the old days.

Mr. Kormos: Read about the justices of the peace who have made some of the most bizarre and wacko comments. One of the problems and concerns expressed by good JPs is the lack of ongoing and adequate training.

I tell you, Mr. Lalonde, I'm dead serious. There are some incredibly incompetent people sitting on that bench. Inevitably, they're the ones who are political appointments. It's not a retirement for people who have left their former jobs. Quite frankly, observations like yours are what drive me increasingly to believe that a lay bench may not be the most appropriate way to be addressing it. If we require specific legal training for paralegals, why don't we require specific legal training in terms of background for justices of the peace? Why is it okay for anybody, regardless of what their college diploma is, to become a JP, but it's not okay for anybody, regardless of what their diploma is, to become a paralegal? We expect, and rightly so—of course, you're darn right, I expect paralegals to be trained in their respective area of law. But any Liberal hack can get appointed a JP? Please, I've witnessed enough of the incredible shenanigans on that bench personally, and I've read enough of the disciplinary reports to know that, I'm sorry, political patronage has no role when it comes to appointing members of the judiciary, whether it's provincial judges, whether it's federal judges, whether it's justices of the peace.

The Chair: Any other debate? Shall schedule B, section 3, as amended, carry?

Mr. Kormos: Recorded vote.

Ayes

Fonseca, Lalonde, Van Bommel, Wong, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: That's carried.

Schedule B, section 4, government motion number 34.

Mr. Zimmer: I move that subsection 4(3) of the Justices of the Peace Act, as set out in section 4 of schedule B to the bill, be struck out and the following substituted:

"Change to presiding

"(3) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may change a person's appointment as a non-presiding justice of the peace to an appointment as a presiding justice of the peace."

The Chair: Any debate?

Mr. Kormos: I understand what's being done here by virtue of the motion, but this raises the interesting question: The government in this legislation is creating some minimum educational standards for justices of the peace. It's obvious that there's no intent to revoke the appointments of existing JPs who don't meet those standards. If there is, I think it'd be a bombshell and I'd be more than pleased to watch it drop.

In terms of converting part-time JPs to full-time JPs, what is going to be done with respect to part-time JPs who—again, I'm not arguing that they shouldn't—no, I shouldn't say that. I'm not for the moment arguing that they shouldn't be allowed to continue to sit as JPs even though they don't meet the new standards. But will the government be requiring them to meet the standards before they become full-time JPs?

The Chair: Further debate?

Mr. Kormos: Well, I'm asking the question: Is there anything in the legislation that will require people who are being, in effect, upgraded to full-time JPs to meet the new standards?

The Chair: Ministry staff?

Ms. Metrick: There are in the legislation—some may meet them—equivalency provisions as well, so existing justices of the peace, by virtue of their experience, would likely qualify under the equivalency provisions under the legislation if they don't have the educational requirements.

Mr. Kormos: This is wrong. This is unacceptable. We're talking about upgrading the bench, and it's being done in a most modest way. The government is maintaining a lay bench. It's requiring some minimal educational standards.

And again, we all know, or ought to know, that the promotion, if you will, from part-time to full-time JP is a little political plum that's handed out there. Part-time JPs—it was like the classification, they tell me, that used to be As and Bs, amongst other things: presiding and non-presiding and the type of stuff you could do.

I'm not suggesting at this point that anybody lose their job or lose their appointment because they don't meet the new standards, but I don't think we should be promoting people without them meeting the new standards. What's sauce for the goose is sauce for the gander. Why not then simply tell paralegals who have been practising for x number of years, "Never mind being grandparented, subject to a two-year limit"? If we're going to promote part-time JPs who don't meet the new standards to full-time JPs, then hell's bells, let's promote de facto paralegals to full-time paralegals under the new regime, even if they don't meet the standards. Is the parallel not that obvious?

I find some double standards here, and what's the reason? The political patronage component of promoting part-time JPs to full-time JPs is oh, so obvious. This is a bad, bad proposal. Part-time JPs should be maintained as part-time JPs and should not be promoted to full-time JPs unless they meet the criteria, including the educational requirements, because there are part-time JPs out there who are excellent and there are part-time JPs out there who are nothing more than political lapdogs of the government of the day.

The Chair: Further debate? Shall the government motion carry?

Mr. Kormos: No.

The Chair: All those in favour? Opposed? It's carried, PC motion.

Shall schedule B, section 4, as amended, carry?

Mr. Kormos: One moment.

The Chair: Any debate on schedule B, section 4?

1140

Mr. Kormos: No. My comments were all made during the course of discussing—

The Chair: Shall schedule B—

Mr. Kormos: One moment. My comments were all made during the course of discussing various amendments. Thank you, Chair.

The Chair: Thank you, Mr. Kormos. Further debate? Shall schedule B, section 4, as amended, carry?

Mr. Kormos: No.

The Chair: All those in favour? Opposed? That's carried.

Schedule B, section 5. PC motion number 35, Ms. Elliott.

Mrs. Christine Elliott (Whitby–Ajax): I move that section 5.1 of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by adding the following subsection:

"Per diem justices

"(0.1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint per diem justices of the peace."

The purpose for this amendment is to allow for more flexibility in the system and to allow for per diem justices of the peace other than those who have been retired to work outside of some of the normal court hours and therefore allow for greater flexibility and efficiency in the system.

The Chair: Further debate? Seeing none, shall PC motion number 35 carry?

Mr. Kormos: Carried.

Interjections.

Mr. Kormos: You can't have it both ways, folks. Carried.

The Chair: That's carried.

Interjections.

Mr. Kormos: Goddammit, you vote when it's time to vote. You don't vote after the vote's been called.

The Chair: That is carried.

PC motion number 36.

Mrs. Elliott: I move that paragraph 3 of subsection 5.1(1) of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by striking out "70 years" at the end and substituting "75 years".

This has been requested by the Association of Justices of the Peace in order to bring JPs in line with justices who are retiring.

The Chair: Any further debate? Seeing none, shall PC motion number 36 carry? All those in favour? Opposed? That is defeated.

Next, we have PC motion number 37.

Mrs. Elliott: I move that subsection 5.1(2) of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by striking out "70 years" at the end and substituting "75 years".

For the same reason as noted in the previous motion.

The Chair: Any debate? Shall PC motion 37 carry? All those in favour? Opposed? That's lost.

PC motion number 38.

Mrs. Elliott: I move that subsection 5.1(3) of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, be amended by striking out "70 years" at the end and substituting "75 years".

Again for the reasons as previously noted.

The Chair: Any debate?

Mr. Kormos: I find it interesting the government is opposing these motions. This is the government that said that seniors who want to work beyond the traditional retirement age deserve the dignity of being able to work. This is the government that said that the cleaning lady down at the Sheraton Centre from the Philippines, who doesn't speak very good English and who makes barely over minimum wage, who does backbreaking work flipping mattresses and cleaning bathtubs and toilets, should be able to work until she's 70, 75 or 80. This is the government that said mandatory retirement is discriminatory, that it's a violation of human rights. This is a government that said, in response to the criticisms put to it, that, no, this had nothing to do with people having to work because the government wouldn't raise the minimum wage to, let's say, the \$10 an hour that even the Toronto Star now suggests it should be raised to, or that there were inadequate pensions. This government said, "No. Work for work's sake," because we shouldn't deny people that opportunity. As the government pointed out, politicians don't have retirement ages. We can run until the electorate decides they no longer want us here. This is

the government that insisted it was on the side of human dignity, human rights when it changed the Ontario Human Rights Code so that working folks in this province could no longer expect to be able to retire at the age of 65.

Here we have a job, justice of the peace, that doesn't involve any heavy lifting, that doesn't involve working on a blast furnace, that doesn't involve laying concrete block on cold, cold February days. It involves a great deal of work on the part of the person performing it, intellectually and in terms of their ability to analyze. What's the government suggesting, that people, once they reach 70, no longer have the mental faculty to permit them to be analytical and logical and fair? What's the government suggesting, that the wisdom acquired over the course of perhaps 10, 15 or 20 years of sitting on the bench is of no value just because that person reaches the age of 70? What's this government, in effect, saying, that these are simply old people who should be shoved aside and dismissed because they have nothing more of value to contribute?

For the life of me, I can't understand why the government is opposing these motions before the government. It seems to me like the height of hypocrisy.

The Chair: Any further debate?

Mr. Kormos: I guess not.

The Chair: Seeing none, shall PC motion 38 carry? All those in favour? Opposed? It's defeated.

Government motion 39.

Mr. Zimmer: I move that section 5 of schedule B to the bill be struck out and the following substituted:

"5. The act is amended by adding the following section:

"Per diem justices

"5.1(1) The Attorney General, on the request of a justice of the peace, may change his or her designation from that of a full-time or part-time justice of the peace to that of a per diem justice of the peace if the following conditions are met:

"1. The Chief Justice of the Ontario Court of Justice recommends that the justice of the peace be designated as a per diem justice of the peace.

"2. The justice of the peace provided services on or after April 1, 2000 as a full-time or part-time justice of the peace.

"3. The justice of the peace has retired or will retire as a full or part-time justice of the peace before reaching the age of 70 years.

"Previously retired justices of the peace

"(2) A justice of the peace who retired before the day this section comes into force may be designated as a per diem justice of the peace if he or she has not attained the age of 70 years."

1150

The Chair: Any debate?

Mr. Kormos: Once again, these are per diem justices of the peace. These are justices of the peace, as I understand it—and please correct me if I'm not right about this—who sit at the request of the regional justice who

allocates where JPs sit and takes care of vacancies and so on. It seems to me—and I've got to tell you, I think the JP bench should be fully staffed, such that if per diems are used, they're used to help fill in for gaps that aren't anticipated. I really think that we cannot develop a strong bench based on per diems. This is different from the piecemeal JPs; these are per diems. Again, it won't be a matter of the police saying, "Well, we'll go to Justice of the Peace A, B or C, because A, B or C is the one who signs informations without the more rigorous questioning."

Why would you not want a 71-year-old JP to do this? If in fact, as you imply, people over 70 are simply too old to be of any use or value, if they haven't got their faculties about them—because that's what the government's implying when it rejects the motions of Ms. Elliott.

Mr. Zimmer: On a point of order just to help, Mr. Chair: When I was reading in motion 39, I stopped at the section "Previously retired justices of the peace." I'm sorry. On the following page, there was a further section:

"Term of appointment

"(3) A per diem justice of the peace may serve until he or she attains the age of 70 years."

Mr. Kormos: No problem. That's the full motion. No quarrel with that. But you underscore my point. You're sending these people out to the scrapyard once they've reached 70. I've got to tell you that it seems to me that a JP who, by the time they've reached the age of 70, may have sat on the bench for 15 or 20 years may well have acquired some pretty significant knowledge and skill and talent. As I say, getting around to the 70-year-old and the government's concern that once they reach—because that's what the government is expressing here. Once JPs reach 70, what are you suggesting? They're senile? Is the government suggesting that they've lost their faculties? Is the government suggesting that they couldn't find their way to and from the courtroom? Or is the government simply suggesting that once you're grey—oh, Mr. Lalonde, you and I are in a special club here—once you're grey of hair, you are no longer capable of providing legitimate input?

Mr. Lalonde: I don't qualify any more.

Mr. Kormos: Mind you, some of your colleagues have done something. You know what's fascinating? I know people who came to this Legislature, men who had grey hair when they came, and over the course of being here acquired colour in their hair. I don't know what kind of gene pool they come from, but I'd sure like to swim in it.

Mr. Lalonde: You qualify, and we'll make sure the Attorney General gets hold of you pretty soon.

Mr. Kormos: But there's a real problem here and a real contradiction. This government heralded the elimination of so-called mandatory retirement when in fact it wasn't mandatory retirement. You see, prior to the amendments to the Human Rights Code, it wasn't suggested that nobody could work after they were 65, was it? This goes further. This literally says that you

can't work, you're prohibited from working, once you reach the age of 70.

Before this government's amendments to the Human Rights Code, people could retire at 65, but nothing in the Human Rights Code or in the law in Ontario said they couldn't work once they reached 65. A whole lot of people did. You're saying that a justice of the peace can't work. You won't permit them to work. You can't raise the argument about being saddled with people who, perhaps as a result of age, may not, regrettably, possess all of the skills they once had, because these are per diems. You pick and choose which ones you hire and which days you hire them for. Right? So you can't use that argument.

This is repugnant stuff. It's repugnant. I think that organizations like CARP and United Senior Citizens of Ontario should be made aware, and will be, of your perspective.

You know, Judge Gregory Evans served us as an Integrity Commissioner.

Mr. Lalonde: Good man.

Mr. Kormos: He was an outstanding member of the bench while he sat as a member of the bench. Mr. Lalonde, he was over 70 when he served as the Integrity Commissioner. I tell you, I'd seek his counsel as a person over 70 in a New York minute without any hesitation or concern. So you had no qualms in that regard.

Just what is your motive here? These are per diems. There could perhaps be some argument made for a mandatory retirement age because you want to see new blood. Quite frankly, these are the arguments New Democrats made about the workforce, about the fact that if you force people to work until they're 70 and 75, there's no room for new workers. Right? But these are per diems. They aren't part of the regular daily workforce on the POA or the bail court bench. They will be hand-picked by the regional or senior administrative judge or JP and told when and where to sit. This is neither fair nor is it good policy, nor does it take advantage—because, as I say, we're not talking about working on the blast furnace. You won't hear me advocating this for women and men in the steel mills, because we should be looking at earlier and earlier retirement ages.

Let me get this straight. A lawyer appearing in one of these courts can be 71 or 72 years old. How old was J. J. Robinette when he was still arguing cases, Mr. Zimmer? He was over 55, wasn't he? You bet your boots he was. You know Robinette, one of Canada's most skilled litigators? I'm pretty sure he was over 55, and I suspect—yeah, I'm pretty sure—he was over 70 too. So a lawyer can be over 70, but as a per diem JP—there could be a good policy argument for having a retirement age for justices of the peace, if only to allow turnover. Right?

The Chair: Mr. Kormos, we're considering breaking for lunch, if you would—

Mr. Kormos: We can break for lunch, then. Thank you, Chair.

The Chair: We'll take a one-hour recess and we'll be back here at 1 o'clock.

The committee recessed from 1159 to 1315.

The Vice-Chair: The clause-by-clause process for Bill 14 is now reconvened. We were in the midst of debate on motion 39. Mr. Kormos, you had the floor.

Mr. Kormos: I was speaking to the hypocrisy of the government in forcing—not forcing, because it wasn't forcing; it's clear that the government wants JPs to retire at the age of 70—in denying the right of JPs over the age of 70 the ability to act as per diems. The government now, all of a sudden, is with the New Democrats when it talks about retirement ages. Of course, they're typical Liberals. The nice thing about being a Liberal is that you don't always have to be a Liberal. So here the government takes the NDP position in terms of retirement age, but the arguments around the per diem are entirely different, because there you can't argue that a person of a certain age is no longer capable of doing the job or no longer interested, because these are people who are hand-picked by whoever is going to be administering the placement of JPs. I just find it sad and alarming.

Again, it makes me very sceptical about this whole bill in the context of what we're talking about right now. This bill is not going to be the great victory for Mr. Bryant that he and those people around him planning his Liberal leadership campaign are hoping it will be. This bill will probably do more to advance Ms. Pupatello's campaign as leader, or perhaps Mr. Smitherman's, than it will Mr. Bryant's.

Having said that, it may well create a window of opportunity for Mr. Zimmer, because if and when the bill passes, the fact is that nobody knows as much about that ministry as Mr. Zimmer as PA. I quite frankly think that if Mr. Zimmer had been at the helm, we wouldn't have seen incredibly incompetent legislation like the pit bull legislation, like Bill 14 as it's turning out to be in its totality or, for instance, Bill 107, the abolition of the Ontario Human Rights Commission. Can you imagine that, Chair, shutting down that very group, the commission that fights for the human rights of little people, of victims of discrimination, of victims of sexual harassment? This government is shutting down the very body that is the only body that people, unless they're very wealthy, of course, can go to, that workers can go to, that women can go to when they're sexually harassed in their workplace. We know how dangerous that can be because we know what it can lead to.

I'm confident that if Mr. Zimmer had been at the helm, we wouldn't have seen that stuff. I'm confident that if Mr. Zimmer were at the helm, the debate around paralegals wouldn't be as divisive and as contentious; that Mr. Zimmer, who's met with many of the paralegals, for instance, would have been able to address and reconcile the differences and address the concerns that so many of them have had and continue to have. I'm also confident that there would have been real and meaningful JP appointment reform in part B.

Thank you kindly, Chair. I'm not sure if it's clear or not, but I won't be supporting the government's motion.

The Vice-Chair: Further discussion?

Mrs. Elliott: If I may, I would just like to echo the comments made by Mr. Kormos. I see no reason to distinguish between the age of retirement for justices of the peace at age 70 and judges at age 75. This was an attempt to bring them into line and to align the positions with that respect. The Association of Justices of the Peace has requested this amendment. They have members who are ready, willing and able to serve, so I truly don't understand why it should be stopped at age 70 instead of age 75.

The other thing I'd like to say is if this motion passes, and I suppose it will, I would submit that this should be in addition to section 5.1, which was added pursuant to motion 35.

1320

The Vice-Chair: Further discussion? Not hearing any further discussion, I'm going to ask, shall motion 39 carry?

All those in favour? Opposed? It's carried. Thank you very much.

Mr. Kormos: Jeez, Chair, do you know that if Mr. Runciman hadn't had an important appointment after lunch, that again would have been a tied vote and the government whip's office would have been having kittens—not literally, but figuratively.

The Vice-Chair: Thank you, Mr. Kormos.

We will now go to PC motion 39.1.

Mrs. Elliott: I move that section 5.1 of the Justices of the Peace Act, as set out in section 5 of schedule B to the bill, as remade by government motion 39, be amended by adding the following subsection:

"Appointment of per diem justices

"(2.1) In addition to per diem justices of the peace designated under subsection (1) or (2), the Lieutenant Governor in Council may appoint per diem justices of the peace on the recommendation of the Attorney General."

Mr. Kormos: On a point of order, Mr. Chair: I am asking you to find this motion out of order. Let me explain why, because I seek a ruling in this regard. It is my submission to you that this motion, being identical in terms of the pith and substance to the motion originally moved by Mrs. Elliott and supported to the final person by the Liberal caucus, is out of order. It's my submission that her previous motion, supported by this committee unanimously, in fact, by virtue of the success of government motion 39, survives 39.

This is the situation: Motion 39—the motion number of the government, the one that was just voted on—addresses Bill 14, and addresses section 5 as it is in the bill. It would become an incredibly complex and difficult thing for members and caucuses to anticipate each others' motions, never mind speculate on the likelihood of success of that motion. Do you understand what I'm saying? The motion that Mrs. Elliott formerly made that was supported by the government precedes the moving of this motion. The government neither anticipated hers when they drafted theirs, nor did she anticipate theirs when she drafted hers. The government knew—this is the interesting kicker—that they had this motion number 39.

They could have voted against Mrs. Elliott's motion. They chose not to. Think about it. The government implicitly—

Interruption.

Mr. Kormos: That's a BlackBerry transmitting. It could be in another room; what the heck.

The government implicitly, by accepting Mrs. Elliott's motion, knew that it was going to impact and add to their motion 39. Again, I appreciate that's a very fine point, but I'm suggesting that there's no need for Mrs. Elliott to move this motion, that the position of the government should have been to defeat her first motion, and they didn't. They supported it unanimously, to the final person, and it becomes part of the bill. What was repealed by motion 39 was not section 5 as amended, but it was section 5 as it appears in the bill. The bill, for instance, hasn't been reprinted. We're in the process.

So I'm suggesting to you—again, it's not an easy call to make. I am suggesting to you that since we're in the process, since the government motion that was just passed, number 39, amends section 5 as in the bill, not section 5 as it might subsequently be amended, and in view of the fact that the government unanimously supported Mrs. Elliott's motion—and furthermore, if I recall correctly—correct me if I'm wrong—they didn't even speak against it. They didn't even put on the record their opposition to it. I call that double acquiescence. I don't know what you call it where you come from. Down where I come from, we call that double acquiescence. I just made that up, "double acquiescence." I thought it might be appropriate in the circumstance.

But I want you to consider that. This is an interesting little scenario here. Otherwise, you create the potential for the government to suck and blow at the same time. One moment they can support a motion to the effect of the ability to appoint per diems, and now they're given an opportunity—I don't know whether they would or not—to vote against Mrs. Elliott's motion to give the Attorney General the power to appoint per diems. Lord knows, Chair, you don't want to facilitate the government sucking and blowing simultaneously—a most unattractive image.

The Chair: Further comments?

With respect to what you said, Mr. Kormos, each amendment deals with the bill at the time and the form when that motion is moved. Mrs. Elliott's motion is in order. I feel it is substantially different.

I'm going to ask if there's any further debate on this.

Mr. Kormos: You've made your ruling. It's over.

The Chair: Mrs. Elliott?

Mrs. Elliott: In that case, speaking to the motion, then, I would submit that the previous motion that has just been carried only deals with the appointment of retired justices or those who have already acted as per diem justices. This one is different in that it allows for the appointment of per diem justices generally and there's no reason, logically speaking, why it can't be done if the principle has been accepted to begin with.

Mr. Kormos: I want to speak to this, and I think it warrants some serious consideration. Let me tell you why. It gives the government yet an additional power, a power in addition to the power in your motion number 39, which talks about appointing, as per diems, judges who have retired but who aren't over 70. I can't for the life of me at the moment try to concoct, nor do I want to concoct, a scenario. But it gives you the ability in a situation of emergency, let's say—as a matter of fact, let's talk about emergency management, emergency preparedness. Let's go one further and talk about parts of Ontario, huge chunks of Ontario, that aren't urban centres. I'll go back to the north, to the ridings of Kenora—Rainy River, Timmins—James Bay, which some of you are familiar with. What about the need for a judicial authority to do a very single act in a scenario that's unanticipated? Shouldn't there be a way or a means of ensuring that that judicial act, which should be performed by a justice of the peace, can be accomplished in the event that there is no sitting JP? In most of the north, there ain't going to be a full-time presiding JP, not in those communities, is there? And where there are no per diems under your amendment—in other words, per diems to be appointed by virtue of retired JPs—wouldn't it be, in the public interest and in the interest of administration of justice, appropriate to have this power, obviously to be used very, very rarely? It's like the old movies, where Wyatt Earp appointed some deputies to go catch the bad guys, and he just stood there—maybe it wasn't Wyatt Earp, it was Gene Autry or whoever—and made them deputies for a day, deputized them so they could perform that function.

1330

I think this is an interesting opportunity. I'm not suggesting that the government has to make a practice of it. I'm not suggesting that the government is going to use, as its primary framework, the proposal in your amendment 39, where you use retired JPs—although when we speak to schedule B as a whole, I've got some problems. Are you going to appoint retired JPs who haven't met the qualifications as per diems? Think about that. You talk about these standards, but you don't say here, "We'll appoint retired JPs"—because you could have a whole lot of those grandparented, full-time presiding JPs, if and when this bill passes, who will not meet the standards, right? I'm not about to argue that you should displace a whole bunch of people who are sitting as JPs right now because they don't meet the standards, but you don't appear to have ensured that the retired JP that you're going to appoint as a per diem meets your minimum standards either. I think that's a flaw. I think the public wants to know that if we're creating new standards for JPs, those standards should be implemented as fully as possible. So I just point that out in the context, and I'm going to speak to that when we talk to schedule B in its entirety.

I think Ms. Elliott's motion creates opportunities. It doesn't create problems; it doesn't create hurdles. It doesn't say the government has to appoint per diems

outside of its scheme; it doesn't say even that it will. But it gives the government the power to do that.

What do you do, and I'm just hurriedly trying to think of an example, in the event of—well, Budapest, where the people are as mad as all get-out. Can you believe it, that a Prime Minister lied about the state of the books in the course of an election? Now, of course, there the people seized—I shouldn't be endorsing that—the state radio station, God bless them. Those Hungarians have been through a lot over the course of the last 50, 60 years. But what do you do in a case where you need a whole lot of JPs really fast—either a whole lot or just one? What if there's a scenario where there has to be a whole lot of JP action right now, it can't wait, and you simply don't have any presiding JPs, or you don't have any presiding JPs who are free to do it, or you don't have any of your per diems available in your, let's say, more formal per diem scheme? Wouldn't it be desirable for the Attorney General, through the cabinet, to be able to really quickly say, "Okay, let's see if Mr. Zimmer is available"—it's 20 years down the road; he's been the Attorney General, he's failed at a leadership bid and has finally retired from politics—"We'll make him a per diem, even though he's not a retired justice of the peace"? Wouldn't that be a convenient thing for the government to have available to it, for the police to have available to them, for the crown attorneys to have available to them, even for defence counsel to have available to them for an accused? You see, it's awfully hard for an accused to argue for his or her release from custody if there isn't anybody to argue in front of, isn't it?

It's not unknown. You as a government, you Liberals, tolerate, accept and condone deputy judges who aren't retired former judges—are they?—in small claims court. They aren't retired anything. They're per diems. They don't have to be retired judges; they're per diems. So you're using per diems in small claims court in the style that Ms. Elliott speaks of. You're not just using retired judges as per diems, you're using per diems in the small claims court. Unfortunately, it's become the norm rather than the exception, and I think that's a problem that hopefully we can address at some other point in relatively short order. I think this warrants consideration.

The Chair: Further debate? Seeing none, shall the PC motion 39.1 carry? All those in favour? Opposed? It's lost.

Shall schedule B, section 5, as amended, carry?

The Chair: Any debate on schedule B, section 5, as amended?

Mr. Kormos: No, thank you.

The Chair: Shall schedule B, section 5, as amended, carry? That's carried.

A new section: government motion, number 40.

Mr. Zimmer: I move that schedule B to the bill be amended by adding the following section:

"5.1 The act is amended by adding the following section:

"Accommodation of needs

"5.2(1) A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the review council for an order under subsection (2).

"Duty of review council

"(2) If the review council finds that the justice of the peace is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the needs of the justice of the peace be accommodated to the extent necessary to enable him or her to perform those duties.

"Undue hardship

"(3) Subsection (2) does not apply if the review council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the needs of the justice of the peace, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

"Opportunity to participate

"(4) The review council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

"Crown bound

"(5) The order binds the crown."

The Chair: Any debate? Mr. Kormos?

Mr. Kormos: I want, please, some help in understanding how this alters the structure of the existing bill.

Mr. Zimmer: I'll ask Ms. Metrick or Ms. Middlebrook to please come forward.

Mr. Kormos: Please.

Ms. Metrick: The substantive section hasn't changed at all. It's exactly the same as in the original bill. The only difference is that rather than it being 5.1 and 5.2 and part of the same section, it's been separated into two different sections to allow for more flexibility in terms of proclamation of the various sections of the legislation. In other words, one could proclaim 5.1 before 5.2. When the two are together in one section they have to be proclaimed at the same time. That's the only difference. Substantively, they're the same.

1340

Mr. Kormos: Gotcha, yes—or the proclamation section could be tinkered with. Let me speak to this, because this is something that I've raised before in a number of arena, and I raise again. I find it laudable that the government proposes to accommodate justices of the peace who become disabled. Then we go a little further and look at the weasel words: "Subsection (2)"—the accommodation—"does not apply"—that's always the kicker, isn't it, friends?"—"if the review council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the needs...." I don't know what that means, "the person responsible." It seems to me that it's the Ministry of the Attorney General that's responsible. What's this "person"?

There are persons out there who are skilled, trained, experienced professionals in terms of working with

persons with disabilities to assist and enable them to perform on a daily basis, including performing their jobs. I can't for the life of me think how it would impose undue hardship on a person. Some of these jobs are very challenging. Some of the workers are called personal support workers. Some of the jobs are very challenging; these people know they are. Mind you, they're not particularly well paid, either. But then, aha, "considering the cost, outside sources of funding, if any"; that's the kicker.

So what this section says and what this bill says, because the section reinforces and repeats what's in the bill, is that this government is only interested in accessibility for persons with disability if it doesn't cost too much, and it's on a very subjective level because there are no criteria; it doesn't say "if the costs are more than \$1,000 a year, more than \$10,000 a year" etc. I don't find that acceptable. We either believe in accessibility for persons with disability or we don't. This comes down to fundamental human rights, doesn't it? It's like saying, "Oh, you can have your rights guaranteed and enforced as long as they don't inconvenience too many people." That doesn't cut it. That's not the standard. We either believe in accessibility or we don't.

Look, quite frankly, nobody's saying that there will be infinite, undeterminable costs, because there's a point, everybody agrees, at which a disability could become so overwhelming and profound that one can't work any more. I understand that. Persons with disabilities and advocates for persons with disabilities understand that as well. So I'm very troubled by the qualifier in here: "considering the cost."

I go then one further, and this is the shocking part of schedule B. The government, to the credit of people drafting this bill and the policy developers, contemplate and consider the prospect of a person employed as a JP acquiring a disability in the course of the performance of their job and, although I would argue inadequately, nonetheless address the need or the prospect of them being accommodated. Where in this bill is there accommodation for people with disabilities who might be highly qualified to serve as justices of the peace, to be accommodated during the course of making that application? Where is the guarantee that in fact all of the environment around recruiting, screening and accommodating newly appointed JPs will be designed so that persons with disabilities can be justices of the peace as well? I couldn't find it in the bill. As I say, I was provoked and prompted to look for it because of the commendable consideration in the section that's being amended and basically confirmed by the motion. It really should concern all of us.

I referred to this earlier when we talked about the AG appointments, the political appointments to the screening committee, to the advisory committee that's going to consider applications, and the failure of the legislation—I know there's vague talk about gender and regionalism, but it seems to me that especially in this climate, after some hard, hard struggles, the community of persons

with disabilities and advocates for persons with disabilities has started to win, albeit even if they're symbolic victories. Things have changed a whole long way since you and I were children, Mr. Zimmer. They have, because when you and I were children, people with disabilities were locked away in attics and basements; they were. We didn't see people using aids travelling about the street, not because there weren't people who weren't mobile the way some others were but because they were locked away, either in basements and attics or in institutions. How many great minds, how many great contributions were denied our society because of that attitude? I have very strong feelings about this. There is nothing in the bill that talks about ensuring that we get those persons with disabilities who are qualified—in my view, the requirement should be “highly qualified,” and I'm convinced that they're out there or amongst us—on the bench.

Really think about it. Some of you folks may not have spent as much time in courtrooms as others, but think about the bench, the judiciary. That's not to say that there aren't persons with disabilities serving in the judiciary, but I would put to you that there's a pretty conspicuous absence. It wasn't until too long ago that the bench was conspicuously white and male. That, thank goodness, has changed and, quite frankly, not particularly quickly. But in terms of disabilities, not all disabilities are—can I say it?—visible disabilities; I think many are unseen.

I want government members, please, when we get to the end of schedule B, to entertain deferring voting on schedule B until the Ministry of the Attorney General, and perhaps with the assistance of other ministers responsible in the appropriate areas—we can talk about beefing up this section that you're amending by virtue of blending it—because that's what you're doing, blending it—with some clear language about accommodating persons with disabilities in the course of their application for and search for and introduction to the justice of the peace bench.

As you well know, accommodation ranges from little things to big things. It also involves a whole lot of shift in attitude, doesn't it? Even shifts in attitude can eliminate barriers, can change accommodation. We don't see it in the bill. I'm not castigating any of the government members in this regard. I'm just saying that, again, obviously some attention was being paid to it, but we missed the opportunity to demonstrate to the rest of the world that Ontario is a far different kind of place and a little bit of a special place in ensuring that all of its residents have access to every facet of the province.

That's it, Chair.

1350

The Chair: Mrs. Elliott?

Mrs. Elliott: I think that the general intent, as expressed in this section, is laudable in wanting to make some kind of accommodation for people with disabilities or special needs, but when you come to section 3, you kind of come to a full stop. There is the duty to accommodate, under subsection (2), but then you do take it

away and replace it with cost considerations. It's very reminiscent of a lot of the things that many of us heard when we were on the hearings, the travelling hearings for Bill 107. How many people did we hear from who were disabled who said that they can't get, in some cases, their municipalities to make accommodation for their needs because it would cost too much? Well, cost too much to whom? If it costs too much to allow somebody to get around, to be able to go to a place of work, to be able to go and socialize with their friends, to have a life like all the rest of us have, how much is too much to allow them to be able to do that?

I think we are missing the boat with this. I think we really do need to take another look at it, because we're all, as some people have described it to me, TABs; we're all temporarily able-bodied. But at some point in all of our lives, all of us are going to have one disability or another. I think we need to start looking at it through those eyes and seeing that money shouldn't be the consideration here. Everybody has value. Everybody should be able to participate—should be able to participate as a justice of the peace, should be able to participate as members of the Legislature. We don't have any members currently who have special-needs accommodations, that I'm aware of anyway, but we do have a member of Parliament who brings his personal support worker in with him. He makes a very valuable contribution. We can't overlook the contributions that all of these people have to make. For this reason, I really think that we should take another look at this. I would urge the government members to consider redrafting this section to really reflect what I think is the true intent of this section.

The Chair: Any further debate? Seeing none, shall government motion number 40 carry? It's carried.

PC motion number 41.

Mrs. Elliott: I move that schedule B to the bill be amended by adding the following section:

“5.1 Section 6 of the act is repealed and the following substituted:

“Retirement

“6. Every justice of the peace shall retire upon attaining the age of 75 years.”

The Chair: Mrs. Elliott, I've been advised that this motion is out of order, as it attempts to amend a section of the Justices of the Peace Act that is not opened in the amending legislation—section 6.

Mrs. Elliott: I would ask for unanimous consent to bring the matter forward.

Mr. Kormos: One moment. Without anybody making a point of order—the Chair purports to rule this out of order—I would ask that the Chair entertain some modest submissions before so ruling. Would the Chair indulge me with just a minute here, please?

If I may, we have a 5.1, right? With respect, really, isn't the answer, Mr. Chair, for this motion to merely read that “subsection (3) of 5.1 is repealed and the following substituted”? Rather, the general retirement section—that's the per diem section.

The Chair: Mrs. Elliott, if you'd like to move a different motion, you are more than welcome to.

Mr. Kormos: Could we have a two-minute recess, please, to accommodate our colleague?

The Chair: Is there consent for a two-minute recess?

Mr. Zimmer: Yes.

The committee recessed from 1356 to 1403.

The Chair: The committee is called back to order. We're now on schedule B, section 6. Is there any debate on this? No debate? Shall schedule B, section 6, carry? Carried.

We're on to section 7: page 41.1, a government motion.

Mr. Zimmer: I move that subsection 10(2) of the Justices of the Peace Act, as set out in section 7 of schedule B to the bill, be struck out and the following substituted:

"Regulations Act

"(2) The Regulations Act does not apply to rules established by the review council."

The Chair: Debate? No debate. Does government motion 41.1 carry? It's carried.

Shall schedule B, section 7, as amended, carry? Carried.

We go on to section 7.1: government motion 41.2.

Mr. Zimmer: I move that schedule B to the bill be amended by adding the following:

"7.1 On the later of the day section 7 of schedule B to the Access to Justice Act, 2005 comes into force and section 130 of schedule F to that act comes into force, subsection 10(2) of the Justices of the Peace Act is repealed and the following substituted:

"Legislation Act, 2005

"(2) Part III (Regulations) of the Legislation Act, 2005 does not apply to rules established by the review council."

The Chair: Debate?

Mr. Kormos: Could I just have a brief explanation of the impact of this?

Mr. Zimmer: I'll ask Ms. Metrick or Ms. Middlebrook to reply.

Ms. Metrick: I think leg counsel is going to speak to it.

Ms. Gottheil: The bill originally did have this provision in it in section 7 of the bill, which is section 10 of the act. And 10(2) had said that part III of the Legislation Act does not apply to rules, which means they're not like regulations and they don't have to be published. The reason that we changed that back to "The Regulations Act does not apply" is that schedule F of this very bill will be repealing the Regulations Act and replacing it with part III of the Legislation Act, but that may come into force later. So in case this comes into force first, we should use the old wording of "regulations" and only change it when that schedule F comes into force.

Mr. Kormos: Thank you kindly.

The Chair: Further debate? Shall government motion 41.2 carry? Carried.

Section 8: Government motion 42.

Mr. Zimmer: I move that subsection 11(15) of the Justices of the Peace Act, as set out in section 8 of schedule B to the bill, be amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding the following clause:

"(d) refer the complaint to the Chief Justice of the Ontario Court of Justice."

The Chair: Any debate? Seeing none, shall government motion 42 carry? Carried.

Any debate on section 8? Mr. Kormos.

Mr. Kormos: This addresses the whole business of complaints, or begins to deal with those sections that deal with complaints about justices of the peace. I have one concern, and that is, how do people in this very multi-lingual, multicultural province get assurance that their concerns—here it's in the context, obviously, of the behaviour of a justice of the peace—that their complaint will be dealt with, not only in a way that's fair, but in a way that they comprehend? Again, the bill makes frequent references to English and French, the two official languages, and I appreciate that the state can't even—I mean, are there over 100 languages spoken in Ontario? There are people from 100 different countries at least, and I suppose when you think of very regional languages and so on, there's a huge number. We all know, if not in our own experience in the experience of our neighbours, how frustrating it is, how isolating it is, how alienating it is for people for whom English is not the first language.

Is there a general section here—a broad, very general section—that talks about accommodating, in this case linguistically, a complainant? Do you understand what I'm saying? Nobody is going to begin to list all the conceivable languages, but is there a provision in here—just help me find it; I'll be happy if we get it pointed out to us—that talks about some sort of assurance that barriers will be eliminated for complaints? Nothing could be more important. You see, a complainant who walks away from the complaints process, who doesn't understand clearly what happened is never going to be happy about the complaints process. They're going to be convinced that somebody pulled some strings, that the fix was in, it was a done deal, all those sorts of things. Again, that's not healthy.

1410

If we're trying to upgrade the bench at the JP level, it seems to me that we're acknowledging the complaints process. You heard some of the popular—and I'm not going to endorse any of the comments in particular—mythology out there around complaints about the judiciary. There's a sense that there's no sense doing it, that it's a small, tightly knit, incestuous community, that they protect each other. I'm not stating that myself; I'm just saying that's the popular mythology around it.

Mr. Zimmer: I'm going to ask Ms. Metrick.

Ms. Metrick: There's a general provision with respect to assistance to the public in 9(3) that reads, "Where necessary, the review council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints." Then

there's provision for telephone access and provision for persons with disabilities as well.

Mr. Kormos: Yes. I have a big circle around that and a star beside that one. I was pleased.

Ms. Metrick: Right. But a general provision with respect to 9(3), "Assistance to public," and there are provisions with respect to French and English as well. So I would say in terms of the general provision for assistance, 9(3).

Mr. Kormos: In the preparation of documents, making complaints, I'm hoping—and again, I'd appreciate it—is the parliamentary assistant in a position to state on the record that it is the intention of the Ministry of the Attorney General to ensure that language barriers are accommodated?

Mr. Zimmer: Mr. Kormos, if I can have a three- or four-minute adjournment, I will reflect on that and get back to you.

Mr. Kormos: I appreciate that.

The Chair: Will the committee be okay for a five-minute recess?

Mr. Kormos: Please.

The committee recessed from 1413 to 1419.

The Chair: Order. Any further debate?

Mr. Zimmer: Mr. Kormos had asked me a question. Just a clarification. Ms. Metrick?

Ms. Metrick: Ultimately, it would be up to the review council, but the legislation does provide, in 9(2), that "In providing information, the review council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities," as well as the general provision with respect to arranging for assistance to members of the public. Subsection 10(1) provides that "The review council may establish rules of procedure for complaints committees and for hearing panels and the review council shall make the rules available to the public."

Certainly there is an intent to take into account cultural and linguistic barriers. There are specific provisions with respect to bilingual French and English hearings. So there is an intent to take into account cultural and linguistic barriers, but it would ultimately be up to the review council how it sets up its procedures.

Mr. Kormos: Thank you kindly.

The Chair: Any further debate? Shall government motion 42—no. Shall schedule B—

Mr. Zimmer: Sorry, Mr. Chair, I'm just having trouble hearing you.

The Chair: Shall schedule B, section 8, as amended, carry? Carried.

Any debate on section 9? Seeing none, shall schedule B, section 9, carry? Carried.

Schedule B, section 10, government motion 43.

Mr. Zimmer: I move that section 10 of schedule B to the bill be amended by adding the following section to the Justices of the Peace Act:

"Justice's retirement, etc., inability or failure to give decision

"Decision after retirement, etc.

"13.1(1) A justice of the peace may, within 90 days after reaching retirement age, resigning or being appointed to a court, give a decision, or participate in the giving of a decision, in any matter previously tried or heard before the justice of the peace.

"Inability to give decision

"(2) If a justice of the peace has commenced hearing a matter and,

"(a) dies without giving a decision;

"(b) is for any reason unable to make a decision; or

"(c) does not give a decision under subsection (1),

"a party may make a motion to the Chief Justice of the Ontario Court of Justice for an order that the matter be reheard, and the Chief Justice may order that the matter be reheard by another justice of the peace or by a judge.

Mr. Kormos: On a point of order—

Mr. Zimmer: Sorry, I'm not finished. Do you have a point of order now?

Mr. Kormos: I'm sorry, you have page 2. Go ahead.

Mr. Zimmer: Thank you.

"Failure to give decision

"(3) If a justice of the peace has heard a matter and fails to give a decision,

"(a) in the case of a judgment, within six months; or

"(b) in any other case, within three months,

"the Chief Justice of the Ontario Court of Justice may extend the time in which the decision may be given and, if necessary, relieve the justice of the peace of his or her other duties until the decision is given.

"Continued failure

"(4) If time has been extended under subsection (3) but the justice of the peace fails to give the decision within that time, unless the Chief Justice of the Ontario Court of Justice grants a further extension,

"(a) the Chief Justice shall report the failure and the surrounding circumstances to the review council as a complaint in accordance with section 10.2; and

"(b) a party may make a motion to the Chief Justice for an order that the matter be reheard, and the Chief Justice may order that the matter be reheard by another justice of the peace or by a judge.

"Rehearing

"(5) If the Chief Justice of the Ontario Court of Justice makes an order under subsection (2) or clause (4)(b) for the rehearing of a matter, he or she,

"(a) may direct that the rehearing be conducted on the transcript of evidence taken at the original hearing, subject to the discretion of the justice of the peace or judge presiding at the rehearing to recall a witness or require further evidence; and

"(b) may give such other directions as are considered just."

The Chair: Debate?

Mr. Kormos: On a point of order, please: The motion purports to amend section 10 of the act. Section 10 of the act creates a new section 13, which addresses standards of conduct.

Mr. Zimmer: Sorry, I didn't hear that.

Mr. Kormos: My apologies. See, do you remember we were talking about accessibility?

Mr. Zimmer: I'm paying attention.

Mr. Kormos: I know you are, but all of us are—there you go.

Section 10 of the bill, which creates a new section 13 of the act, deals with standards of conduct. Fine. That's the extent of section 10 in the bill. Section 10 has only one section in it, if you will, and that's section 13. So now we've got 13.1, an amendment that has nothing to do with standards of conduct. It has to do with dead, dying, disabled or otherwise reluctant JPs.

Now, what I need from you, Chair, is a ruling as to whether or not this is an appropriate amendment to section 10, because it doesn't amend any of the content of section 10. It doesn't expand on it. It doesn't say, for instance, under "goals," subsection (3) of the new section 13, "maintaining the high quality of the justice system and ensuring the efficient administration of justice" by, amongst other things, permitting cameras in the courtroom, although I'm not suggesting I'm necessarily a fan of it. That would be an amendment, by permitting cameras in the courtroom. So I ask you, how is this motion an amendment to section 10 in the bill, which creates section 13, which has nothing to do with inability or failure to give decisions?

Furthermore, I have to know this. Should this motion be in order, and should, perchance, it pass, we have this brand new part of the bill now, this 13.1. If I wanted to move a motion—for instance, referring to the inability to give a decision—I trust that motion would be in order, wouldn't it? If I wanted to move a motion, should this amendment pass, to things referenced in subsection (1), would that be in order? Is that what you're suggesting, Chair? I really request a ruling in that regard.

The Chair: Anyone else who'd like to speak to Mr. Kormos's point of order?

Mr. Zimmer: I'm going to ask Ms. Metrick to speak to this.

Ms. Metrick: Just in terms of—

Mr. Kormos: Sorry, with respect—thank you very much; I'm almost regretting doing this, because I'd love to hear what you have to say—you're not part of a debate around points of order.

Mr. Zimmer: No, but with respect, she will offer comment on how this amendment relates to the section. That's a technical question.

Mr. Kormos: Chair, it's not a technical question; it's a procedural question. It's a matter of—

The Chair: It's a point of order, and it's for the members to address.

Mr. Kormos: It's a matter of parliamentary procedure.

Mr. Zimmer: I'm sorry, I didn't—

The Chair: It's a point of order, and only members can respond or comment.

Mr. Zimmer: In my view, the amendment does speak to the section. It's a proper amendment, and I await the Chair's ruling.

The Chair: Anyone else? We're going to take a five-minute recess, and we'll be back.

The committee recessed from 1429 to 1440.

The Chair: The committee is called back to order.

The ruling is as follows: This amendment is in order, as it adds a section to the Justices of the Peace Act which, on face value, appears to be within the scope of the bill. Although it is out of order to amend a section of an act that is not opened in the bill, it is permissible to add sections to the act as long as they're within the scope of the bill.

Any further debate on motion 43?

Mr. Kormos: I appreciate the interest that is being addressed in this—"does not" make "a decision." What conceivable circumstances would give rise to that?

Mr. Zimmer: When someone does not make a decision?

Mr. Kormos: Yes.

Mr. Zimmer: I can tell you that I sat as the vice-chair of a federal tribunal responsible for some 89 members. From time to time, members of my tribunal would just not bring themselves to the point of decision, for a variety of reasons—just an inherent ability to decide; a whole host of reasons. So there you go.

Mr. Kormos: What kinds of reasons?

Mr. Zimmer: As myriad as the human personality.

Mr. Kormos: Assuming, and agreeing with you, that they could well be myriad, give us three. Myriad is a whole lot, so out of the whole lot—

Mr. Zimmer: I'm enjoying this because it's on the record for my former colleagues at the IRB. It might range from sheer laziness—

Mr. Kormos: I'm sorry?

Mr. Zimmer: Just laziness, a late-developing phobia in life about decision-making, or extreme sensitivity to the issue to be decided.

Mr. Kormos: Okay, that's fair enough.

Mr. Zimmer: Literally; those really happen.

Mr. Kormos: No, that's fair enough.

The Chair: Any further debate? Seeing none, shall government motion 43 carry? Carried.

Ms. Elliott has proposed an amendment, 43.1. Does everyone have a copy?

Mrs. Elliott: I move that section 10 of schedule B to the bill be amended as follows:

"Justice's retirement, etc., inability or failure to give decision

"Decision after retirement, etc.

"13.1(1) A justice of the peace may, within 90 days after reaching retirement age, which, notwithstanding anything else in this act, shall be age 75, resigning or being appointed to a court, give a decision in any matter previously tried or heard before the justice of the peace."

Then it carries on, but that's the essential part of the amendment.

The Chair: Any debate?

Mr. Zimmer: Sorry, what do you mean, "It carries on"?

Mrs. Elliott: It carries on with the rest of 13.1, as written. That's the only amendment to the section.

Mr. Kormos: If I may, I understand the amendment to be that section 13.1, as contained in section 10, is amended by adding after the words "retirement age," the following words: "which, notwithstanding anything else in this act, shall be age 75." As I understand, that's the extent of the amendment, the government having, of course, introduced retirement age in this particular section as an amendment to the bill.

The Chair: Any further debate?

Mrs. Elliott: Only to add that the purpose is, of course, to introduce the concept of the retirement age, which hasn't been addressed, generally speaking.

The Chair: Any further debate?

Mr. Kormos: If I may, Chair, once again I find it difficult to understand how the government could, on the one hand, as I understand it, permit provincial judges to sit till 75 and then tell justices of the peace that they can only sit till 70. While I am a strong advocate of retirement ages at a sufficiently early time in one's life with a sufficiently adequate pension, which, of course, members of this Legislature, in their wisdom, in 1996, addressed by virtue of creating a defined contribution pension plan, members of the Conservative, Liberal and New Democratic parties were leading edge when they dismantled their defined benefit pension plan and became part of that very modern trend, one which is now embracing the world, whereby pensioners have control over their own pension funds. So MPPs, of course, have this relatively gold-plated, defined contribution pension plan that they're free to invest as they wish. They're not the victim of some board of directors, hidden away, making investments that draw only 5%, 6% and 7%. Members of the Legislature, with their defined contribution pension plans and their control over those plans, are free to invest in investments that return 20%, 25% and 30% annual returns—well, they are.

So, as an advocate of early retirement with adequate pensions, but knowing full well that this government not only extolled the virtue of working till you die but encouraged it and indeed passed legislation that will require more and more people to do it—because one of the things they said was that getting old doesn't bar you from making a contribution. The arguments that were used by the government to attack the opponents of their ill-conceived bill were that the opponents of work-till-you-die-in-the-workplace legislation were somehow anti-senior, were ageist, that they didn't believe seniors had a contribution to make. Well, all Ms. Elliott is doing is saying that seniors have a contribution to make. It is an interesting proposition, and I find it difficult to understand how government members could not support this amendment, which is, of course, in order.

The Chair: Any further debate? Seeing none, shall PC motion 43.1 carry? All those in favour? Opposed? It's lost.

Shall schedule B, section 10, as amended, carry? Carried.

We're on section 11: a government motion, number 45. We're switching the order.

Mr. Zimmer: I move that section 11 of schedule B to the bill be struck out and the following substituted:

"11. The act is amended by adding the following section:

"Role of regional senior judges

"15(1) The regional senior judge, under the direction of the Chief Justice of the Ontario Court of Justice, shall direct and supervise the sittings of the justices of the peace in his or her region and the assignment of their judicial duties, and the authority of the regional senior judge shall include,

"(a) the approval of duty rosters;

"(b) the determination of the sittings for justices of the peace and the assignment of justices of the peace to those sittings;

"(c) the assignment of cases and other judicial duties to individual justices of the peace;

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"(d) the determination of sitting schedules and places of sittings for individual justices of the peace; and

"(e) the preparation of trial lists and the assignment of court rooms, to the extent necessary to control the determination of who is assigned to hear particular cases.

"Dedicated justices

"(2) In exercising his or her functions under subsection (1), the regional senior judge may temporarily assign a per diem justice of the peace to do exclusively one of the following:

"1. Hear matters under the Provincial Offences Act.

"2. Hear matters under one or more other Ontario acts specified by the regional senior judge.

"3. Hear matters under an act of the Parliament of Canada.

"4. Carry out other judicial duties specified by the regional senior judge.

"Delegation

"(3) A regional senior judge of the Ontario Court of Justice may delegate the authority to exercise specified functions under subsections (1) and (2) to the regional senior justice of the peace and to one or more other justices of the peace from the same region.

"Transfer to a judge

"(4) In the case of a trial that would otherwise be held before a justice of the peace, any party may submit a request to the regional senior judge of the Ontario Court of Justice for the region to have the trial held before a judge, and the regional senior judge shall determine whether the matter shall be heard by a judge.

"Delegation

"(5) A regional senior judge of the Ontario Court of Justice may delegate the authority to exercise his or her functions under subsection (4) to a judge of the Ontario Court of Justice.

"Final decision

"(6) A decision made by a regional senior judge or his or her delegate under subsection (4) is final.

"Crown rights under other acts

“(7) Nothing in this section affects the rights of the crown, the Attorney General or a counsel or agent of either of them, under any other act, to require that a provincial judge preside over a proceeding in respect of an offence under that act.

“Duties outside courthouse

“(8) A justice of the peace shall not act as a justice of the peace outside a courthouse except under the direction of the regional senior judge.

“Duty rosters public

“(9) The duty rosters shall be made available to the public.”

Mr. Kormos: “The regional senior judge, under the direction of the Chief Justice ... shall direct and supervise....” I’m looking for the—

Ms. Metrick: The differences?

Mr. Kormos: Yes, from the amendment here, with the assistance of the little compendium we got.

Ms. Metrick: That first section is the same. Where the section differs is under delegation, subsection (3), where it says, “And to one or more ... justices of the peace.” The purpose is to give the regional senior judge the authority to delegate to the regional senior justice of the peace and to one or more justices of the peace from the same region, because delegation is to the regional senior justice of the peace, and operationally there’s also delegation sometimes to local administrative justices of the peace as well. So it allows the regional senior judge to delegate to both the regional senior justice of the peace and local administrative justices of the peace. That’s consistent with existing practice.

Mr. Kormos: So it’s just subsection (3) that’s—

Ms. Metrick: Subsection (3), as well as (4). Subsection (4) was just tightening up wording. Subsection (7)—

Interjection.

Ms. Metrick: Okay. It’s rewording it. It now says, “In the case of a trial that would otherwise be”—

Mr. Kormos: Heard or held, okay.

Ms. Metrick: Yes. That’s the wording in (4).

Next is subsection (7), “Crown rights under other acts.” That’s just to be clear that this section could not be interpreted as limiting or affecting crown election rights conferred by other statutes. For example, the Occupational Health and Safety Act and the Environmental Protection Act provide for the right of the crown to elect that a matter be held before a judge, so that carries on.

Finally, the only other change is in subsection (8): “A justice of the peace shall not act as a justice of the peace outside a courthouse except under the direction of the regional senior judge.” That’s to be responsive to emergent problems that sometimes occur, for example, where there has to be an evacuation and a justice of the peace isn’t in a courthouse. It could be argued that a justice of the peace is acting without authority if he or she is not acting in a courthouse and if there hasn’t been an opportunity to update the duty roster. It’s also consistent with the earlier provisions with respect to things being under the direction of the regional senior judge.

Mr. Kormos: Thank you very much. That’s valuable input.

There are two very interesting subsections here: Subsections (4) and (7). What they do is cause me to reflect back on this government’s failure to address the issue of standards and qualifications when it comes to changing part-time JPs, who are JPs by virtue of appointment prior to this legislation, to full-time and presiding JPs, amongst other things.

Look what this says—and help me, Counsel, on this one. If the crown says, “I don’t want a JP to hear this prosecution, I want a judge,” the crown may require a provincial judge?

Ms. Metrick: Yes. Those are crown election provisions under other statutes.

Mr. Kormos: See what it’s saying? The crown can judge-shop. The crown could say, “No, no. I don’t want the JP hearing this prosecution, I want a judge,” and it’s as of right. But when it comes to an accused who says, “No, no. I don’t want a JP to hear it, I want a judge,” then the application has to go to the regional senior judge, and it’s discretionary.

Ms. Metrick: Yes. Either party may submit a request to the regional senior judge to have—

Mr. Kormos: So what does this say? Let me hearken back. You elect up to a Superior Court judge if you want a jury or a preliminary hearing—right, Mr. Zimmer?—or if you’re doing some judge-shopping if you end up in a provincial courtroom where you’ve got a judge who’s notorious for not being particularly partial to the type of defence argument you’re going to make. Does this imply that somehow justices of the peace are less capable than provincial judges? Why else would we give a party the power to request that it be moved from a trial in front a JP to a provincial judge?

The very existence of these sections betrays and demonstrates a lack of commitment on the part of this government to genuinely upgrade the quality across the board of justices of the peace, or else the crown wouldn’t as of right maintain the power to say, “No way am I going to let a JP hear this prosecution. I want a real judge.” That’s the word that’s not said here, isn’t it, Mr. Zimmer? “I don’t want a JP hearing this trial. I want a real judge.” Similarly, the very proposition in subsection (4) by either party, accused or prosecutor: “I want a real judge, not a justice of the peace.” This causes me great concern. I’m not suggesting these sections shouldn’t be here. I’m suggesting they wouldn’t have to be here if there were a bona fide commitment to developing a strong, well-trained JP bench here in the province of Ontario.

Again, I personally find it insulting to those whom I know as very capable justices of the peace. Oh, where is Mr. Lalonde when we need him? It’s obviously of some comfort to the poor accused or defence counsel who finds himself ending up in front of the latest political hack who has been appointed more importantly because of his or her political contributions to the Liberal Party than because of any skill, expertise, training or interest in their

role as a justice of the peace. It's just a very, very peculiar thing.

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This institutionalizes judge shopping, doesn't it, Mr. Zimmer? If only we let the kid who steals the car make the same election, saying, "I don't want that provincial judge to hear me; I want to go in front of a justice of the peace because I think I'm going to get a much more generous response to perhaps a rather weak defense argument." What else can this mean? It means that you, sir, Mr. Zimmer, and the Attorney General are still maintaining a lesser-qualified and a better-qualified bench in this province. It can't mean anything else.

This illustrates the contradictions in this bill. You say you're going to professionalize, upgrade the JP bench, and yet you're still persisting in saying that JPs aren't going to be real judges, and that's why we allow crown attorneys to say, "No, I don't want a JP to hear this trial; I want a judge." That's why you even entertain the prospect of a defence lawyer doing the same thing. I think you will recall the concerns expressed by some counsel here in the city of Toronto suggesting that more serious bail hearings be heard by provincial judges rather than justices of the peace. Do you recall those comments, Mr. Zimmer? I'm sure you do. That was telling in terms of what's happening on the JP bench.

One of the other obvious observations is that JP courts are oftentimes literally treated as second-class courtrooms in terms of the facilities that are made available to them, in terms of the very ambiance, the very environment that they're expected to sit in. And I've been in small-town Ontario, where you've got courtrooms set up—and not just JP courts; provincial courts—in everything from Legion halls to church basements. It's fascinating to be conducting a cross-examination and to hear the taps of beer being poured upstairs as the Legion opens for lunch.

Mr. Runciman: They're above that.

Mr. Kormos: Mr. Runciman, I'm referring to the government maintaining the right of a crown attorney to move his or her trial away from a JP up to a judge. What does that say? It says that this government is insistent on not building a strong, trained JP bench, even though it says that's what this bill is all about. You've been caught.

"The duty rosters shall be made available to the public." More importantly, in view of the concerns expressed by the report of at least two years ago now, the Ontario Association of Chiefs of Police—you know the report I'm talking about—couldn't get a hold of JPs, couldn't find them. It was a damning report. You shook your head, and some of the stories made your hair curl. What's going on? If the regional senior judge can direct and supervise the sittings of the JPs, the assignment of judicial duties, the assignment of cases, the determination of sitting schedules, the places of sitting, the approval of duty rosters—and I assume duty rosters mean you've got to be available, you've got to be on call either at your house, which means being sober, of course, or at an office, either at the Ministry of the AG offices or at the

police station, if you're going to do bail hearings there. Where is the structure, where is the guideline for these duty rosters? Are folks across Ontario going to be guaranteed that there will be a JP available? The system has to be such that a JP has to be available 24 hours a day, seven days a week. It's absolutely imperative. Could we get an assurance that these duty rosters are going to ensure availability of JPs 24/7? That's a question to the parliamentary assistant.

The Chair: Mr. Zimmer?

Mr. Zimmer: Yes, if I can just respond, the fact of the matter is that there are a very small number of cases that might come before a JP that have had very complex, technical statutes that involve complex and technical legal interpretations that perhaps a fully trained lawyer, now a judge, would be able to handle more expeditiously. That usually happens, again, on these complex, technical questions rather than on the cases that the JP would be seized of, no matter how complex, where they revolved around questions of fact or credibility which don't require that extra technical skill. We have that kind of system in the Superior Court. For instance, there are judges who are known to specialize in commercial cases, complex bankruptcy cases, and when they're assigning the cases, there are judges even at the Superior Court who will tend to do more complex criminal cases. They'll send a complex commercial case to the bankruptcy—it's that sort of expertise and skill set. We want to make sure that the appropriate case gets in front of the best-trained person to do it.

The Chair: Mr. Kormos?

Mr. Kormos: Mr. Zimmer, I don't buy that. Take a look at your very own subsection (2) of this section. It very specifically talks about how a regional senior judge can assign JPs to hear provincial offences matters, to hear matters under one or more other acts of Ontario, to hear matters of acts of the Parliament of Canada. The legislation already contemplates that different JPs may develop different areas of expertise. We understand that.

One of the problems right now in the family court has been the abolition of the distinction between family court and criminal court judges. Criminal court judges are being pushed into family courts because they're picking up the slack, and with all due respect to them, they simply don't have the background in family law or the sensitivities that allow them to do their job as effectively as they could were they specialized.

Your very own language is an indictment of the JP system that you're proposing here. You say there are certain complex technical and legal interpretations that a judge can handle more expeditiously—and then I'll add my own words—than a justice of the peace. Well, you're either a judicial authority or you're not. I'm not quarrelling with the proposition in subsection (2) that says a regional senior judge can maybe tell a certain JP, "You're going to be doing highway traffic court, and you're going to be doing environmental cases or labour law cases, or workplace safety." Fair enough, but either a JP is adequately trained or they're not.

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JPs don't hear Criminal Code trials. They hear provincial offences matters, for the largest part. And for the life of me, for you to say that there are going to be cases where the complex, technical legal interpretations that a judge can handle more expeditiously—and I'll add my words: than a JP—suggests that your government has no commitment whatsoever to upgrading the JP bench, to ensuring that people with the highest possible standards are appointed and that they receive adequate levels of training. Maybe your obsession with a lay bench—and I know I've got colleagues here who will disagree with me on this—is preventing you from developing that expertise, because you and I both know that one of the most significant functions of maintaining a lay bench is to maintain the pork barrel.

It's true. Maintaining a lay bench ensures that you've got a slush fund to piece off deposed ambassadors who may need work when they come back to Ontario—

Interjection.

Mr. Kormos: Well, it's true—or defeated candidates in a provincial election. We've seen it; we've observed it. It's been part of our experience for any number of us who have been around here for a while—complex, technical legal interpretations that a JP is incapable of making. What does that say about justices of the peace in the province of Ontario? I don't buy it. What I do buy is this: There are JPs out there who are capable of handling complex technical and legal work—you bet your boots there are—but there's also a whole pile that aren't, and you're not doing anything about them with this bill, nor are you doing anything about them by upgrading your standard so that they need a community college diploma.

Mr. Runciman proposed a motion that talked about specifying some specific experience in, as he put it, criminal law. But it could have been environmental law, it could have been workplace health and safety, any number of those sorts of things. The government wasn't interested. Your persistence in making sure that not just the best-qualified but the sort-of-qualified people—right?—qualified and highly qualified, are going to be referred to the Attorney General again reinforces that your government has every intention of using JP appointments as political patronage as much if not more than any prior government ever has and did. And oh, they did; I tell you, they did. That's been one of the sources of grief on the JP bench. We've got people there because of their political connections and not because of their expertise or, more importantly, their interest or their passion to learn.

The Chair: Any further debate? Seeing none, shall government motion number 45 carry? Carried.

We're going to move back to PC motion number 44.

Mrs. Elliott: I move that section 15 of the Justices of the Peace Act, as set out in section 11 of schedule B to the bill, be amended by adding the following subsection:

"Duty roster"

"(1.1) A duty roster referred to in clause (1)(a) may require a justice of the peace to act as a justice of the peace outside a courthouse at any hour."

The purpose of this amendment is to increase the efficiency of the system to allow JPs to act in the course of their duties in circumstances that might not fit into regular courtroom hours.

The Chair: Further comment?

Mr. Runciman: We heard Mr. Kormos talking about JPs going to a police station, for example, to conduct a bail hearing. I'm not aware of that happening anymore. It may be happening, but I'm not aware of it. Certainly, if you talk to front-line police officers, talk to the chiefs' association and others, this is a real problem. We've talked about JPs over the past number of years sort of echoing the approach of the judges with respect to suggesting or, more than that, declaring that their judicial independence is being compromised if they appear in locations outside of the courthouse.

It's gotten to the point, in my view, of ridiculousness, which has a real impact on achieving good management efficiencies within the court and corrections system in this province. I know that many of the older jails in the province—and one in my community, in Brockville, where we have the county court and we have the county jail. When I was in government, we talked about building a new courthouse and building a new lock-up that would have a connection to the courts, and the judges said, "No, we can't do that. We can't have that kind of direct linkage between the court and the provincial lock-up, because that is, in some way, shape or form," which is just beyond me and beyond the comprehension of the average soul in this province, "interfering with judicial independence."

The same approach has grown within the JP ranks over the past 10 years or so, where they will not go into the jails. They used to go into the jails and do bail hearings. They certainly, in my understanding, won't go into a police station. It's the same sort of argument that they put forward, and of course there are costs associated with that.

One of the reasons that I've been suggesting this corps of part-time per diem JPs is because of the frustrations that police have encountered over the past number of years with, again, this sort of view that, "We cannot perform the kinds of roles that have historically been performed by JPs. Now that we're on salary, if you have a problem at 2 or 3 o'clock in the morning on a Saturday, sorry, we're not getting out of bed to attend to it."

That's the sort of thing that didn't happen 15 or 20 years ago when we had a large contingent of part-time JPs and per diem JPs who got up, got out of bed, went into the police station and did what had to be done and received some remuneration for their efforts and mileage etc. Now we're on a pure salary system, and you don't get the reaction or the response or the attentiveness to the police needs that was the case in the past.

I think that this restrictive component which has been incorporated into this legislation, again, is going down this path. We're talking about a duty roster, but, to me, what happens if you're frustrated with the duty roster? What happens if you are unable to get hold of a JP for a

critically important decision? Every JP should be available. I have no problem with a duty roster, but for whatever reasons someone on that duty roster is not available, every JP should be able to attend to the duties assigned to him by being sworn in as a justice of the peace. They should not be legislatively restricted, and that's what you're doing here. I have no problem with a duty roster, but to legislatively restrict them from performing their duties outside of a court unless they are part of that roster just doesn't make any sense to me.

The Chair: Any further debate?

Mr. Zimmer: The difficulty with the proposed amendment is that this would provide for a duty roster that requires a justice of the peace to work outside the courthouse. The content of the duty roster really is a matter best left to the regional senior judge, not to be covered in statute. From a practical point of view, in any event, the regional senior judge already has the power to do what's set out in the amendment. So I would urge my colleagues to vote against this amendment.

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The Chair: Mr. Kormos?

Mr. Kormos: This is an interesting issue. To the parliamentary assistant: Are JPs currently operating outside of either courthouses or their offices at the direction of regional administrative authorities? I don't know, and I hearken back to a time perhaps long gone. You say that this is happening now in terms of the duty roster, and the amendment says that the duty roster can, among other things, require JPs to function outside of their usual workplaces.

Let's take a look at a circumstance of a JP going to a police station to deal with the first appearance by an accused person. Again, what historically has happened is that your B-list JPs were the ones who tended to go out there, and all they did was automatically grant the request for a three-day remand if, in fact, the police wanted it. That's three days of somebody being in the local lock-up at expense.

Maybe the remand was appropriate, maybe bail was never going to be granted, but it seems to me a JP who can and will show up and save everybody a whole lot of time, energy, effort and money, if they're prepared—and I'm not suggesting that they should be prepared, because the police aren't going to be prepared, defence isn't going to be prepared to mount a full-blown bail hearing, but if it's a matter that can be dealt with summarily enough, you can save a whole lot of grief for everybody when there isn't a release order from the sergeant in charge by creating a release order as a judicial order then and there. So it seems to me not inappropriate that a duty roster could put JPs on a weekend call list to do that sort of thing.

I suppose what I'm asking is—and if people don't know, fine; that's okay—is that happening now?

Ms. Metrick: I can speak to that. Now justices of the peace are available on a 24/7 basis. First of all, as Mr. Zimmer pointed out, the judiciary is responsible for the scheduling of justices of the peace, but with respect to the

scheduling in terms of warrants after hours, there's the telewarrant centre. With respect to weekends, there are WASH courts on weekends. Justices of the peace are no longer, as far as I'm aware, going into jails and so on, but they are available on a 24/7 basis. There are on-call justices of the peace and so on. If there are concerns, the regional senior judge is responsible for the scheduling of justices of the peace, and this makes the accountability clear here in this provision.

Mr. Kormos: One of the problems down where I come from—I don't know if it's been addressed yet, because Mr. Bryant dragged his heels on this one—was the problem of bail hearings not being conducted in Niagara south in Welland, as the county seat courthouses, and all of them being concentrated in St. Catharines because it was more efficient for the Attorney General—not for families, not for defence counsel, not for the police who had to transport these people. Do you understand? Welland cops pick somebody up, and they've got to drive them all the way up to St. Catharines. They're in the police station till the morning. They've got to drive them all the way up to St. Catharines instead of taking them to the Welland courthouse. That was out of convenience for the Attorney General.

So here you go. Not very impressive in terms of meeting the needs of a whole pile of people, including the crown attorney's office. The crowns weren't happy about that either. The crowns weren't happy, defence counsel weren't happy, the cops weren't happy, the families of accused who perhaps were going to be potential witnesses at a bail hearing—because again, notwithstanding the concern about people being released inappropriately, we should also have some concern about people arrested for whom, for Pete's sake, there's no reason to be holding them in jail, least of all when you know they're going to be released at some point anyway. Get the thing done and over with and out of the arms of the authorities and off the tab of the taxpayer.

Okay.

The Chair: Mr. Runciman.

Mr. Runciman: I want to take this opportunity to once again point out—and I'm going to use language that I haven't used—the shameful absence of the Ontario chiefs of police, their not appearing here, given the concerns I've heard over the years related to this issue. I appreciate the observation that the staff from the ministry have given, which is, as far as I'm aware—and I'm paraphrasing you—that this is not a problem. Well, I know there have been problems with the telewarrant system, and I know there are problems with respect to the requirements that the judiciary is placing on the corrections side of the system, for example. I again point to my own location in Brockville. There is a door that connects the jail and the courthouse, but they can't use that. They have to take prisoners outside and come around, because the judiciary cannot have them having that direct linkage, that somehow this is interfering with judicial independence. Try and explain that one to me. Again, I've said that when I was minister of corrections we were

trying to look at building a new facility in the northern part of the city, which would connect with the courthouse through a tunnel. But again, they had problems with this.

If you look at what's happening in terms of prisoner transportation to courts—we have videoconferencing to some degree now, and hopefully we'll be expanding it. Prisoner transportation is still a big challenge in many regions—the costs associated with it; the dangers associated with it; the contraband that comes back into corrections facilities; weapons, the other potential there. This is all because of this holier-than-thou judiciary, which tells us that we cannot do common-sense things because somehow it interferes with the independence of the judiciary. It doesn't make sense to me, and at some point we should be giving these folks a direct kick in the rear end. This is one effort here in terms of ensuring that JPs have more flexibility than is currently the case.

You talk about the regional judge making sure this happens. Well, the regional judges are part of the problem here, in my humble view. Of course, I'm not a lawyer and I'm not part of that elite in the province who seem to think that this is a really serious and ever-present danger to the independence of the judiciary. I'm one person who's been involved in judicial issues for about 15 years, and I get my dander up about a lot of these things, because common sense just doesn't seem to prevail in so many of these kinds of decisions.

The Chair: Any other debate? Seeing none, shall PC motion 44 carry?

Mr. Runciman: Recorded vote.

Ayes

Elliott, Kormos, Runciman.

Nays

Duguid, Fonseca, Jeffrey, Van Bommel, Zimmer.

The Chair: That's lost.

Shall schedule B, section 11, as amended, carry?
Carried.

Mr. Kormos: Chair, if it's agreeable, I don't think there are any further amendments to schedule B—

The Chair: There's a government amendment.

Mr. Zimmer: Yes, 46. There's one more.

Mr. Kormos: Where is that?

Mr. Zimmer: It's 46.

The Chair: Government amendment 46: Mr. Zimmer.

Mr. Kormos: My apologies.

Mr. Zimmer: I move that schedule B to the bill be amended by adding the following section:

"11.1 The act is amended by adding the following section:

"Regional senior justices of the peace

"16. (1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a regional senior justice of the peace for each region.

"Consultation

"(2) Before recommending an appointment under subsection (1), the Attorney General shall consult with the Chief Justice of the Ontario Court of Justice.

"Functions

"(3) A regional senior justice of the peace shall advise and assist the associate chief justice co-ordinator of justices of the peace and the regional senior judge in all matters pertaining to justices of the peace.

"Terms of office

"(4) Regional senior justices of the peace each hold office for three years.

"Further appointment

"(5) A regional senior justice of the peace may be reappointed once, for a further term of three years, on the recommendation of the Chief Justice of the Ontario Court of Justice and, if the Chief Justice so recommends, the Lieutenant Governor in Council shall reappoint the regional senior justice of the peace.

"Salary at end of term

"(6) A regional senior justice of the peace whose term expires continues to be a justice of the peace and is entitled to receive the greater of the current annual salary of a justice of the peace and the annual salary he or she received immediately before the expiry.

"Transition

"(7) Regional senior justices of the peace in office immediately before the coming into force of this section are continued in office and,

"(a) if a regional senior justice of the peace is serving a first three-year term, he or she may be appointed to a second three-year term; and

"(b) if a regional senior justice of the peace is serving a second three-year term, is ineligible for reappointment."

1530

The Chair: Debate?

Mr. Kormos: No quarrel with the amendment, but question: Why the term limits?

Mr. Zimmer: I didn't get your question.

Mr. Kormos: The bill creates term limits for a regional senior justice of the peace. Are you advocating them for Liberal members of the Legislature?

Mr. Zimmer: That's what we've decided to do.

Mr. Kormos: Please.

Ms. Metrick: The three-year terms are consistent with current practice and it's done on a rotating basis, so regional senior justices of the peace serve for terms and then they go back and serve as justices of the peace, and then others—so it's consistent with the current practice and the practice of rotating people through those positions.

Mr. Zimmer: Good management practice.

Mr. Kormos: Think about it, Chair: If that were applied to the Legislature—

Mr. Zimmer: You would have been rotated out some years ago.

Mr. Kormos: —that many more people would have a chance to serve in the provincial Parliament. There are all

sorts of people out there who insist that they could do it better than any one of us.

Mr. Zimmer: Are you advocating term limits for MPPs?

Mr. Kormos: At this point in my career it would be easy for me, wouldn't it? Let the first-termers advocate it; that would be political courage. You know full well there's a strong debate around term limits, and it's an interesting one.

This makes sense.

The Chair: Any further debate?

Seeing none, shall government motion 46 carry? Carried.

There are no amendments in sections 12 to 18. Would it be okay if we grouped them together?

Shall sections 12 to 18 carry? Carried.

Any debate on schedule B, as amended?

Mr. Kormos: We're on the cusp of addressing schedule C. I know there are folks who've been waiting patiently in the room for that.

Mr. Runciman: Freezing patiently.

Mr. Kormos: I think it's comfortable.

Mr. Zimmer: Because you're generating all the heat, Peter.

Mr. Kormos: Well, yes. Look, I think everybody advocates an improved JP appointment process that is more modelled—I've got to tell you, at the federal level the federal judicial appointments continue to seem to be rife with political patronage. It's pretty obvious. The transformation of the judicial appointments process in this province I'm sure goes back to the era of Ian Scott, for whom I have regard; I was fortunate enough to be here when he was Attorney General in that government of 1987 to 1990. There's been an incredible enhancement of the quality of appointments and the appointment process provincially.

I think and believe strongly that there are serious flaws in the legislation, not intended to retain the pork-barrel quality to JP appointments but nonetheless having the effect. The "qualified," "highly qualified," in my view, has the effect. That may not have been the intent of the people who developed that as a policy or who then drafted it in terms of the legislation, but I put to you that's going to be its effect, the lack of clarity around educational standards.

Do you know what's interesting? Once again, think about this: We're telling paralegals, not inappropriately, that they've got to pass a specified, standardized training program—I presume it's going to be a two- or three-year community college program—that teaches them some fundamentals around law and legal procedure and evidence and ethics, yet we don't tell potential JPs to take even one seminar in legal training. That's contradictory, isn't it? There's something bizarre about that. There's something very peculiar about that. I put to you that the current standard of education, post-appointment, for JPs—again, the Hong article in Criminal Reports points out and credible research points out that more experienced JPs consider the training programs silly and a

waste of time. That speaks for itself. Clearly, the training programs appear to be catering to the lowest common denominator.

The government's going to expect, not inappropriately, paralegals to take specific college programs that are designed to prepare paralegals to act as paralegals, but the government isn't prepared to tell people that they need specific college or other educational programs to prepare them to serve as justices of the peace. The lay JP argument is there. Then, what's wrong with lay paralegals? Heck, if JPs can learn on the job, why can't paralegals? Think about it. That's what the government is saying: JPs can learn on the job. We expect a level of literacy; I presume that's the reason for wanting at least a college diploma. We expect them to be able to read and write, but the rest they can learn on the job. So if that's our standard for JPs, who make decisions about people's liberty—when the police drag you before a JP at 9 in the morning after you were picked up at 2 a.m. doing Lord knows what, that JP is the one who decides whether you go to Metro West. Let me tell you, I don't know if you've been inside Metro West or not, but it ain't a country club. It isn't. Your liberty is in the hands of that justice of the peace, and it should be. That's his or her job. That's his or her function. We rely upon them, in the interests of enforcing the Criminal Code, in the interests of public safety and in the broader public interest.

So here I go. I'm being asked to vote for—unless Mr. Zimmer wants to ask me not to vote for schedule B. Mr. Zimmer, by inference, is asking me to vote for a schedule, in contrast to schedule C, where there's no regulatory body that's going to sit down and decide what the educational background should be for justices of the peace.

There's no regulatory body that's going to sit down—do you know what? There isn't even a good character requirement, yet that's very specifically referred to, and not that that shouldn't be referred to. You're darned right, paralegals should have the same good character test of lawyers. Some would argue that's not a very high bar to climb; I would say differently. There's not even a good character test for justices of the peace. Why, they could even have been Liberals. Think about it.

1540

I know the intent, but I say it's incredibly flawed. I also express concern that we, as a committee, are being asked to vote on it—we're going to be compelled to vote on it in a few minutes' time—when we have had so little input to this committee. I don't want to sound like a broken record, but the only thing we received of any substance, that had some research background to it and some analytical content, was the Hong article. A student came forward with the piece that he had written that was published in the CRs. That's all we had. We had no hard data about JP availability. We had no data, be it anecdotal or otherwise, about the performance of JPs out there. I've got my own war stories to tell, but that's not how it's done.

We didn't hear from any of the supervisory JPs talking about what their needs are in terms of training or in terms

of background for new appointments. We didn't hear from court administrators about what's going on in terms of the courtrooms available to JPs. We didn't hear anything about what the Attorney General provides by way of annual training. I learned more about the annual training for JPs in that case of reprimand where the JP was grabbing the breasts of a fellow JP out Windsor-way, after they got all drunked-up at a retraining seminar. Well, it's true. I learned more about the JP training programs from reading that reprimand report than I ever have from any other source. We should have had that presented to us here in the committee.

There should have been a debate over lay versus non-lay JPs, in view of what other provinces have done. I know there are mixed views on it but we should have had the debate. We should have talked about it.

We should have talked about JP remuneration and whether or not the remuneration level is sufficient to attract the sort of people we should be wanting to attract. There should have been an analysis of the appointments—I don't care, over the last five years, over the last 10 years, over the last 15 years—just to test how many were former politicians and whether that was the entry point.

So I'm not pleased and it's just so regrettable. We made it very clear from the get-go that it was not good form to have the paralegal legislation involved in a bill with all this other stuff. As it was, everybody got short shrift. The paralegal issue dominated the public hearings, but even they got short-changed because at the end of the day their issue, in my view, the issue of paralegal regulation in schedule C of the bill, wasn't adequately reviewed, discussed and analyzed. So no, I'm not going to be voting for the schedule.

Yes, I look forward to the day when Mr. Bryant, in response to me during question period, says, "Well, you didn't support our JP reform." Then, perhaps, I can reference how Mr. Harnick told so many people while Bill 14 was pending that he couldn't appoint any JPs until Bill 14 passed, and suggest to Mr. Bryant that he has far more in common with Mr. Harnick than with any other Attorney General in this province's history. Do you understand what I'm saying, Chair? Far more in common with Mr. Harnick. We know what he, under oath, admitted to doing, don't we? Mr. Harnick admitted to lying in the Legislature. I, then, will be able to explain to Mr. Bryant that he has far more in common with Mr. Harnick than he does with any other Attorney General in this province's history. So if that's the game that people want to play, we'll play it, but I just issue a caveat emptor to those who want to engage.

It's regrettable, just so unfortunate, because once again this is the final kick at the can for this one. The next government's not going to be reviewing justices of the peace. They'll be complaining about the fiscal mess that this government left, just like this government complained about the fiscal mess that the last government left.

Thank you kindly. By the way, I'm going to be voting against schedule B.

The Chair: Any further debate?

Mr. Zimmer: Briefly, I just want to touch on the highlights of this piece of legislation—that is, schedule B—as it relates to justices of the peace. I'll put it on the record that what the amendments to the Justices of the Peace Act are going to do is modernize the JP bench by creating minimum qualifications for JPs, updating the complaints and discipline process, and creating a justices of the peace appointments advisory committee that will advertise, interview and recommend justices of the peace. There are going to be sophisticated training programs for justices of the peace. Also, one of the highlights of it is that it's going to allow for the appointment of per diem justices of the peace and retired justices of the peace who can be assigned to specific proceedings, particularly backlog lists that have built up in the various municipalities. It's something that the municipalities have asked for and it's something that the court system has asked for.

I'd invite my friend opposite to join us and vote for this piece of modernizing legislation. I understand your role here: It's opposition for the sake of opposition, and that's the way the system works. So it's not unexpected to have heard your colourful comments over the last two days, particularly today. Although from time to time you've put forward substantive points, for the most part they're colourful and over the top. So I urge you to support and vote for this.

The Chair: Thank you, Mr. Zimmer. Any further debate? Seeing none, shall schedule—

Mr. Kormos: Recorded vote.

Ayes

Duguid, Fonseca, Jeffrey, Van Bommel, Zimmer.

Nays

Elliott, Kormos, Runciman.

The Chair: That's carried.

Seeing that we are at the beginning of schedule C, I'm proposing that we adjourn for today, considering there are only a few minutes.

Mr. Kormos: Chair, we've got 10 more minutes till 4 o'clock. Is it possible? I think it's possible to get the committee's—

The Chair: Is the committee willing? Yes.
Schedule C, section 1: Any debate?

Mr. Zimmer: Just a second. I'm going to get my—just hold on a moment. I've got another group to join me today.

Mr. Kormos: While we're waiting, Chair, I know she's not here today, but I didn't have a chance yesterday to thank Cornelia Schuh, who was legislative counsel and who assisted me in the one amendment that I put forward. She was very patient with me, very understanding and very helpful. So I thank her for doing that—of course, like she did for all us—on very short notice.

The Chair: Thank you, Mr. Kormos.
Any debate on schedule C, section 1?

Mr. Kormos: First, specifically dealing with what is proposed to be section 2 and the inclusion of an arbitrator: While I don't quarrel with the fact that an arbitrator is an adjudicative body for an arbitration, let's understand that the reason that's there is because it is necessary in terms of the definition of "legal services." Everybody knows what we're talking about here: We're talking about what "legal services" includes, and one of the inclusions is appearing at an arbitration. This could mean several things. It could mean appearing at a labour arbitration or some other governmental or statutorily constructed arbitration.

1550

The part where I've got concern is in private arbitrations, because an arbitrator is an arbitrator under the Arbitration Act. Some of us here dealt with the Arbitration Act when we dealt with it a year ago now in terms of the amendments to the Arbitration Act. My understanding—and, quite frankly, I support this view—is that private arbitration is a very private matter. People choose it because it's private. For instance, people can establish their own rules of practice. They are entitled as parties to an arbitration to design it any way—

Interjection.

Mr. Kormos: Go ahead.

Mr. Zimmer: Sorry, just to help me out: You're speaking to section 1?

Mr. Kormos: Yes.

Mr. Zimmer: Thank you.

Mr. Kormos: I know it's confusing, the way the bill is written. It's section 1 of the bill. It's part 0.I, which is section 1.

Mr. Zimmer: Just a second.

Mr. Kormos: Yes, it's difficult; it's confusing.

Mr. John Twohig: You're speaking about section 2?

Mr. Kormos: No, section 1: "The Law Society Act is amended by striking out the heading immediately ... and substituting the following:

"Part 0.I

"2."

Is "part 0.I" the sole part of section 1, or does it include subsequently—I'd be more than pleased to help, yes. Do you understand what I'm saying here?

Mr. Zimmer: Just hold on a second, just so we're on the same sequence here.

Interjection.

Mr. Kormos: Thank you. Yes, we're going to have to repeat all of that, because section 1 just consists of the words "Part 0.I."

The Chair: Further debate?

Mr. Kormos: I'd love to be able to debate that, but I have no interest whatsoever in debating "Part 0.I."

The Chair: Shall schedule C, section 1, carry? Carried.

Schedule C, section 2: government motion 47.

Mr. Kormos: That's where I had the problem, because it said "the following:" and these definitions were the following. Anyway, that's why—

Interjection.

Mr. Kormos: What now, Mr. Zimmer?

Mr. Zimmer: It's three minutes to 4. This is going to be a substantive discussion. Do you want to start this one tomorrow morning?

Mr. Kormos: No. Let me lay it out, because I really hope that there's a response and there may well be a good explanation. You have "arbitrator" in here, and we understand there are any number of arbitrations; there are arbitrations under Ontario labour relations law. But then there are arbitrators who are private arbitrators, and they can be anybody. If you want to pick an arbitrator under the Arbitration Act, it can be the five-year-old neighbourhood kid, for all intents and purposes. Well, it can in theory, right? Parties to an arbitration can design the arbitration any which way they want. That's the whole beauty about private arbitrations. They can also have anybody they want acting for them; they can hire monkeys, if they wanted to, to act for them. It's private. It's not government-supervised, there's no oversight and it's behind closed doors.

My concern is, why is an arbitrator—even though I agree that it's an adjudicative body, but in the context of the rationale for these definitions, why is "arbitrator" there when it's going to be used to define what constitutes providing legal services, to wit, appearing before an arbitrator? It seems to me that there's no interest whatsoever in telling anybody, paralegals or otherwise, that they have to be licensed to appear in front of private arbitrators in a private arbitration, where the parties design the structure and where the state has no interference or no intervention or no involvement whatsoever, other than down the road enforcing the arbitration order should the parties call upon it to do it. I'm not aware of any other reason for the word "arbitrator" being there other than in reference to the definition of the scope of what constitutes legal practice or providing legal services.

That's my question. If there's a 30-second response, please, but—

Mr. Twohig: We can attempt a 30-second response, but I'm afraid it may lead to a five-minute discussion. I guess the simple answer is that you're quite right: There are private arbitrations that may or may not arise by virtue of statute. The private arbitrations may involve anything from a neighbourhood dispute up to very large international commercial arbitrations. The act later, as you'll see, makes provisions for the law society to exempt certain activities, and it may well be that certain of those activities that you would refer to as purely private, where the government has no business, would be exempted.

Mr. Kormos: I hear you, and I suppose my response is this: It's one thing for the exemptions in subsection (5), "A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the bylaws." So are we contemplating the law society passing yet another bylaw saying that non-licensees may represent people in arbitrations under the Arbitration Act, or was it—you see, because that's the activity. My sense, when we were talking about exemptions, was talking about the class of persons, right? Union

negotiators are not prohibited from being union negotiators. What you're saying defines the activity rather than the body performing it, and I hear you and I appreciate it. Again, I agree with you: I don't think the law society would be interested in doing that. But it seems to me that the bylaws are going to be more inclined to list people or groups of people.

Mr. Zimmer: On a point of order, Mr. Chair: It's 4 o'clock.

The Chair: That's not a point of order. It is 4 o'clock, and we will resume with government motion 47, which has not been moved yet, at 10 a.m. tomorrow morning. This committee is adjourned.

The committee adjourned at 1559.

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**Journal
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Vendredi 22 septembre 2006

**Standing committee on
justice policy**

Access to Justice Act, 2006

**Comité permanent
de la justice**

Loi de 2006 sur l'accès à la justice

Chair: Vic Dhillon
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Friday 22 September 2006

Vendredi 22 septembre 2006

The committee met at 1005 in committee room 1.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006

SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2006 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2006 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning, everybody. The committee is called back to order. We're resuming our clause-by-clause consideration of Bill 14. We left off yesterday at schedule C, section 2. We'll begin this morning with government motion 47.

Mr. Peter Kormos (Niagara Centre): No, we won't. We'll begin with me because I have the floor.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you. So here we are. We start this meeting this morning at 1007. I simply want to indicate this, very briefly, seeing as how I have the floor.

Once again, you've heard me indicate how anxious I was to see paralegal legislation introduced over a year and a half ago. I've been eager about it ever since I've been here at Queen's Park, I suppose, because the issue has certainly been around ever since I've been at Queen's Park, for 18 years or so now. The government was anxious to see this bill progress through committee hearings, and opposition caucuses, through their House leaders in meeting with the government, agreed to summer break, if you will, hearings that were held in September. I'll be quite candid: We also agreed to make the very best effort to complete the clause-by-clause in time for the House's resumption on September 25. I believe that that has been done and perhaps, in the course of doing that, some people have been shortchanged, people who wanted to make submissions, especially around that half-day issue. But of course I lost that argument I made yesterday—or Wednesday perhaps, didn't I, Chair?—that we should sit for at least another half-day, if not longer, to hear further submissions.

So I had a conversation with the government House leader's office this morning indicating that the bill may well not be finished clause-by-clause today. Nobody in the opposition caucuses anticipated 100-plus amend-

ments, give or take, from the government, some of them five and six pages long.

We also didn't anticipate the committee inevitably starting late. I'm late from time to time for any number of reasons, but this committee has started late on every day that it sat. Then, yesterday, to have the Chair want to adjourn the committee at 3:50 when there was scarce time available—then again, I have the highest regard for Mr. Zimmer, but Mr. Zimmer then, at 4 o'clock, insisted upon drawing the Chair's attention to the clock so that the Chair had no choice but to adjourn the matter because it was 4 o'clock. I was, quite frankly, indifferent to the clock. It's behind me. I can't see it. I can't see it, least of all, while I'm addressing the committee, addressing the Chair.

So I just want to make it clear that opposition members have put themselves certainly not in a position where they can be charged with dilatory conduct. For the life of me, if you think we shouldn't be commenting on any number of these sections that are being put through this committee on a bill as important as this, then you're sadly mistaken. So I anticipate that we may well have to carry on with clause-by-clause. But, of course, this committee will sit on Wednesday of the coming week. As a matter of course, I believe that's the normal sitting day. If we don't complete clause-by-clause today, then we'll pick it up again on Wednesday and we'll proceed appropriately. But I've got to tell you, the scarce time available isn't aided by starting late or efforts to adjourn early.

1010

I was talking yesterday about the inclusion of "arbitrator," to wit, an arbitration; that is to say, people appearing in front of arbitration are practising law. I appreciate and understand the explanation given, and I agree that it would be inappropriate for any paralegal regulatory body—whether it was self-regulation by paralegals or the law society or the government through its ministry—to regulate who represents whom at bona fide private arbitrations. If you have arbitrations that are being conducted pursuant to statute, like labour relations law, then it could be a different story, although I'm not proposing that it be.

I'm wondering, then, why the government would insist on arbitration here when we haven't had any assurances from the law society, assuming the bill passes—that's a fairly safe assumption, I think. I haven't seen any

rebellions; Spartacus hasn't stridden to the front of the government caucus yet. So without any assurances from the law society, the proposed regulator, that people appearing in front of private arbitrations are none of the regulator's business, quite frankly, why is the government persisting in including arbitrations here when in fact the government, I would presume, has at least indirectly addressed the whole business of people like trade unionists appearing in front of labour arbitrations?

The one key factor, I think one of the distinguishing factors that should prevail in our reflection on this, is the distinction that was made between forums where there is a judge, an adjudicator, an arbitrator, who supervises the proceedings. Remember? There was a distinction made between that type of work and paralegals or non-lawyers appearing there and the fact that that adjudicator—arbitrator, judge, justice of the peace—performs a regulatory role in and of his or her position. But here, arbitration should be a private matter. The government dipped its toes into the attack on arbitration with its recent amendments, but we know the political motivation for that. What's going on here? Why do we have to have "arbitrator" here? It makes me nervous. A whole lot of things do, but this one makes me nervous this morning.

The Chair: Thank you, Mr. Kormos.

Government motion 47.

Mr. David Zimmer (Willowdale): I move that paragraph 2 of subsection 1(6) of the Law Society Act, as set out in subsection 2(10) of schedule C to the bill, be amended by striking out "Selects, drafts, completes or revises" at the beginning and substituting "Selects, drafts, completes or revises, on behalf of a person".

The Chair: Debate?

Mr. Kormos: I shouldn't presume, but I'm going to presume that this addresses, for instance, bank employees on behalf of a person as compared to not on behalf of a person. Can we get some explanation from somebody here? It could be a good amendment. It might be.

Mr. Zimmer: I'm going to ask Mr. Twohig, a lawyer from the ministry, to respond to that question.

Mr. John Twohig: I'm also here with Ms. Kwon, and she's volunteered to answer.

Mrs. Sunny Kwon: Yes, Mr. Kormos, it could. We were thinking that the committee heard that the definition of the provision of legal services is too broad, and this amendment narrows and clarifies the definition by requiring that the activity of selecting, drafting, completing or revising a document be on behalf of a person, and it could include, for example, a bank employee who was acting on behalf of a person. Without the amendment, it was very broad, and so it could have been a bank employee who was just filling out a document. So we wanted to make it clear that the person has to be representing somebody else.

Mr. Kormos: Thank you very much for coming today. I suppose the difficulty is, what if, then, a paralegal whom one hopes to regulate selects, drafts or completes a document on behalf of a small company, a small business? That isn't a person, is it? Am I missing the

point here? Feel free to say, "Yes, Kormos, you're missing the point."

Mrs. Kwon: I guess that's a question of interpretation. Presumably, there is somebody working on behalf of the corporation, so the person would be providing the legal service for that person who's working on behalf of the corporation.

Mr. Kormos: If the interest here is to narrow it, to narrow it down in what regard? If you're narrowing it, that implies you're excluding something, right? If the chart is a circle, what's the peripheral group that you want to exclude by virtue of this?

Mrs. Kwon: We do want to include "on behalf of a person": acting as a representative on behalf of a person or a corporation or a small business or any other sort of entity. It's broad. And then we wanted to, in the next government motion, exclude from that definition certain individuals.

Mr. Kormos: But "on behalf of a person": if I'm arguing, then, that I didn't draft this document—I'm a paralegal. I hear what you're saying. I see your next motion, and fair enough, but I'm not preparing this statement of claim on behalf of a person; I'm preparing it on behalf of ABC Inc., a corporate entity. Is it—

Mr. Twohig: And that corporate entity would be a person.

Mr. Kormos: Then what's the difference? Why are we saying "on behalf of a person"? As compared to who else?

Mr. Twohig: On behalf of yourself.

Mr. Kormos: So you mean there was a fear that this legislation would include people who were acting for themselves?

Mrs. Kwon: We heard during the committee hearings, for example, from the used car salesmen. Used car salesmen, in filling out documents or filling out blanks, would be acting for the corporation and not for another person.

Mr. Kormos: But when I see your next amendment—take a look at the next amendment—you've listed a bunch of exclusions, and that's fair enough. That's responsive to the concerns that have been raised. It's not exhaustive, of course. Call me thick, Chair, but I don't see—I get the "on behalf of" as compared to "for oneself," but nobody ever said that preparing documents for oneself was ever contemplated as being regulating. That's what's happening here. We started with this broad thing, and we've got to narrow it down, instead of defining "legal services" or "paralegal services."

I'm not going to carry on the debate. All I'm saying is that this is a peculiar one. I don't know whether it's benign, because it appears benign, or if it's going to cause grief down the road. And if it causes grief down the road, I suppose schadenfreude will kick in on my part. We'll leave it at that. Right, Ms. Van Bommel?

Thank you kindly.

The Chair: Any other debate?

Mrs. Christine Elliott (Whitby-Ajax): I'd just like to make a comment on record that my preference when drafting is to be as specific as possible rather than to state

things in general terms and then opt out. But, subject to that comment, if we're going to proceed this way in trying to be more specific with respect to those classes of persons doing the kind of work that they are doing who are not included, then I don't have a particular concern with this.

1020

The Chair: Any further debate? Seeing none, shall government motion 47 carry? Carried.

Mr. Kormos: The first victory of the day, Mr. Zimmer.

The Chair: Government motion 48.

Mr. Zimmer I move that subsection 2(10) of schedule C to the bill be amended by adding the following subsection to section 1 of the Law Society Act:

"Not practising law or providing legal services

"(7.1) For the purposes of this act, the following persons shall be deemed not to be practising law or providing legal services:

"1. A person who is acting in the normal course of carrying on a profession or occupation governed by another act of the Legislature, or an act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.

"2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.

"3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.

"4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in arbitration proceedings or proceedings before an administrative tribunal.

"5. A person or a member of a class of persons prescribed by the bylaws, in the circumstances prescribed by the bylaws."

The Chair: Debate?

Mr. Kormos: An interesting amendment. Let's start with paragraph 1. I appreciate the language, "normal course of carrying on a profession", which means that just because somebody is regulated as an architect, let's say, and that person is a professional, a member of a regulatory body, should he or she go outside of the normal business of architecture, which could include some legal documentation—but if he starts preparing divorce documents, he is no longer acting as an architect. I understand and appreciate that.

However, do you remember that on the very first day we talked about mediators? The law society said maybe mediators should be regulated in this regime. That's what the spokesperson said, unless Hansard is wrong. I don't know. I've been here a whole lot of years and I've heard a whole lot of people say they've been misquoted. I have never seen an error in Hansard other than an occasional—when people don't speak sufficiently clearly, like I have from time to time, and they get a word confused.

So mediators are not a regulated profession. Nobody is suggesting that they should be—nobody. It has not come from anywhere. Within the community of mediators there is no suggestion, there's no drive to be regulated. All I want to point out, with due respect, is that although paragraph 1 is fine, in my view, in and of itself and how it stands, and it achieves the goal of excluding any number of professionals who came forward, like car sales people, insurance sales people, mortgage brokers etc.—it appears to, and I believe that that's the intent, and that's a legitimate, bona fide intent—it doesn't deal with unregulated professionals, and there are some out there. We had Dr. Barbara Landau here, just a brilliant leader in the alternative dispute resolution community, with the spokesperson for St. Stephen's, both speaking on behalf of that mediation community. We still haven't protected them. I just want to point that out. Maybe it's coming, but I don't think so.

Number 2: I appreciate that.

Number 3: I don't know, this is a little bit of *reductio ad absurdum*, isn't it? How can you provide legal services to yourself? What do I do? I reach into my left pocket, I pull out \$20, give myself legal advice, put the \$20 into my right hand and put it in my right pocket, if I provided legal services to myself? Let's not be silly.

But fair enough, erring on the side of caution; I just wonder whether the inclusion of an individual who's acting on his or her own behalf, whether in relation to a document or a proceeding or otherwise—I wonder whether somebody is going to seize on that at some point and generate a loophole there. I don't know. There are some pretty clever people out there. They're out there because they didn't run for election; they're clever. They're out there just looking for loopholes in these sorts of things. I just wonder.

Seriously, I wave that little red flag: the inclusion of that paragraph when it should be virtually self-evident, right? Even I, in my most cynical moment during the review of Bill 14, never would have suggested, "You people are preventing people from preparing their own legal documents." So be it.

Number 4: the trade union. You missed the negotiation process, it seems to me. You talk about "arbitration proceedings"—fair enough—"or proceedings before an administrative tribunal"—fair enough—representing a member, let's say, in front of WCAT, representing somebody in front of the EI appeal, representing somebody in front of the CPP, but you missed the negotiations part: "An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in arbitration proceedings"—

Mr. Zimmer: "Or"—

Mr. Kormos: —"or proceedings before an administrative tribunal." Negotiations and reporting back to your membership and signing minutes of agreement subject to ratification are not done before an administrative tribunal, nor are they done in the course of arbitration proceedings. I think the four trade unions that came here were very, very fair. They addressed the issue very

concisely and didn't come here full of bluster, beating up on the government. They very specifically talked about negotiations in the course of providing legal—because you're preparing documents; you are, just like the mediator.

This was the issue with the mediators. Mediators assist divorcing couples, separating couples, in preparing minutes of settlement. That's a legal document that affects rights. It affects the rights of the parties, it affects children's rights and so on. Union negotiators, in the course of negotiations, draft minutes of settlement that they sign with the management people sitting across from them at the table. They go back with these minutes of settlement, seeking ratification from their membership, and it's not before an administrative tribunal and it's not at an arbitration proceeding.

I think, with all due respect, the drafters of this particular paragraph hit the target, but in the course of hitting the target, I believe—once again, I don't think it's the government's intention or, at the end of the day, the regulator's intention to regulate union negotiating activity. The problem is that when the government excludes some union activities but not the others, is there an implication there? Is it implying that others are to be covered? Huh, Mrs. Elliott? Interesting.

Those are my comments on this amendment.

Mr. Zimmer: With the greatest respect to the way you've read paragraph 4, in my view, the first sentence there, "An employee or a volunteer representative of a trade union who is acting on behalf of the union"—that first part of the sentence would cover the negotiation piece—

Mr. Kormos: I'm going to draw a line right there.

Mr. Zimmer: —and the "or" then relates to another category of stuff that comes before arbitration panels and so on. I'm going to ask Mr. Twohig to also comment on that.

Mr. Kormos: Before you do that, because now you've engaged me and this is interesting, what you do then is you create an absurdity of the balance of the sentence. If that's what you're saying, "An employee or a volunteer representative of a trade union who is acting on behalf of the union"—a negotiator acts on behalf of membership, number one. See, the union is represented, for instance, in negotiations with its own employees. The staff at OPSEU are unionized. So the union is the employer. People acting on behalf of the union are negotiating with the employees of OPSEU.

However, let's then see what you're left with in the sentence: "a member of the union in arbitration proceedings or proceedings before an administrative tribunal." That excludes an employee who is not a member of the union. An employee of OPSEU is not a member of OPSEU. An employee of OPSEU is a member of the union that OPSEU members belong to. I've been on their picket line.

Mr. Zimmer: This sounds like that old rhyme: "How much wood could a woodchuck chuck if a woodchuck could chuck wood?"

Mr. Twohig has a comment here.

Mr. Kormos: No, no, no, Mr. Zimmer. You wanted to create an exegetical aura there, and look at the mess you've made. What's that with Laurel and Hardy? "Another nice mess you've gotten us into."

Mr. Zimmer: Mr. Twohig.

Mr. Twohig: Just very briefly, Mr. Kormos and members of the committee, those exact words were lifted from the Nova Scotia legal profession statute, which has a very extensive definition of "the practice of law." As far as we're aware, it's never caused a problem.

I would add, I was here when I heard some of the union representatives say very forcefully that their activities were regulated by statute. So it seems to me that there's a very good argument to say they would be covered in any event by paragraph 1.

Mr. Kormos: They would be covered in paragraph 1 if they were regulated. It seems to me, then, there's no need for paragraph 4.

I'll tell you what, Mr. Zimmer, and let's be fair. Would you consider—and, again, I'll make sure this is dealt with—deferring voting on this? I don't think there are any subsequent amendments that are dependent upon it. Seriously, I'm worried about the language. Number 1, as I say, clearly excludes unregulated professions. We know that. So be it. That's going to have to be dealt with, then, by the regulatory body down the road, but I think number 4—and I'm not quarrelling—that you say came from a Nova Scotia statute—God bless. Again, that's the difficulty in drafting stuff. You beg, borrow, steal. You use best efforts. Would you allow this to be deferred until this afternoon?

Mr. Zimmer: No.

Mr. Kormos: You wouldn't? Well, that's unfortunate. That's very unfortunate.

Chair, I want to move an amendment to the amendment, please. I move that government motion 48 be amended by deleting paragraph 3.

The Chair: Would members like copies of the amendment?

Mr. Zimmer: Yes.

The Chair: We'll just have a brief recess.

Mr. Kormos: No, we need numbers or else people could wander off and—

The Chair: A two-minute recess.

The committee recessed from 1034 to 1038.

The Chair: The committee is called back to order. Any further debate? Seeing none—

Mr. Kormos: Recorded vote, and a 20-minute recess, pursuant to the standing orders.

The Chair: We'll have a 20-minute recess.

The committee recessed from 1038 to 1058.

The Chair: The committee is called back to order. Mr. Kormos has asked for a recorded vote on the amendment to the amendment. All those in favour?

Mr. Zimmer: We're voting on yours.

Nays

Balkissoon, Flynn, Wong, Zimmer.

The Chair: That's defeated. Is there any further debate on government motion 48?

Mr. Zimmer: Mr. Chair, I have an amendment to make to motion 48.

The Chair: Do we have copies?

Mr. Kormos: On a point of order, Chair: Are we going to be provided with written copies of this amendment?

The Chair: We'll need a two-minute recess to get copies of the amendment. This committee is recessed for two minutes.

The committee recessed from 1058 to 1102.

Mr. Zimmer: I move that paragraph 4 of subsection 1(7.1) of the Law Society Act, as set out in government motion 48, be struck out and the following substituted:

"4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal."

The Chair: Any debate?

Mr. Kormos: Any debate? I appreciate this amendment to the government's amendment. It incorporates labour negotiation. In the interest of ensuring that the amendment doesn't omit any legitimate, bona fide labour union activity, because it seems to me—with respect, this is being done on the fly; the amendment is literally handwritten. I appreciate the policy people working as hard as they do, because they shouldn't have to be doing it here, sitting at the committee table and writing things out by hand. They should have the luxury of their desks, their computers and their reference material. So we have:

—"acting on behalf of the union or a member of the union in connection with a grievance": That, of course, then, would deal with the grievance stages that precede the arbitration itself, and that's good;

—"a labour negotiation": I hope that that language is sufficiently clear to embrace the broad range of negotiating that takes place, because there are not just every-two-year or every-three-year contract negotiations. There are negotiations ongoing all the time;

—"an arbitration proceeding or a proceeding before an administrative tribunal": Again, I'm sure it's everybody's intention that that includes all of those tribunals, like CPP, employment insurance, the Social Assistance Review Board, WSIB, WCAT and so on.

I was going to move an amendment to this, "including, but not limited to, the following," one of those types of amendments, that type of language, Mr. Zimmer. I would have preferred that; the government usually prefers that, because it uses the list of things that you're doing as a sort of framework within which to consider whether something that isn't specifically listed is akin to that list. Mrs. Elliott understands, I know, that concept probably far better than I do. I regret that the amendment doesn't

have that language, but at the end of the day that is probably, hopefully, merely a matter of personal preference. Subject to anybody else wanting to speak to this, I am prepared to have this matter, this amendment, put to a vote.

The Chair: Any further debate? Seeing none, shall the amendment to the amendment carry? Carried.

Any further debate on government motion 48?

Mr. Kormos: This is going to go to a vote, I'm sure, very, very soon. But this is the problem: As you know, I'm not entirely happy—I'm not being critical of anybody—with the government's efforts to clean up paragraph 4. Again, here I am. I don't have the reference material, I don't have the resources, and we don't have the luxury of time in this context. That's the problem with pursuing legislation in this manner. Obviously, as soon as we're done, I'm going to get back to my office and I'm going to e-mail and fax this off to the parties and the trade unions, at least, who spoke here.

Just a simple observation—and again, there's nothing secretive about this; this isn't like a budget, where somebody is going to make money or not make money: For the life of me, why couldn't or wouldn't the government have contacted the counsel for the four trade unions that appeared here and talked about paragraph 4? Because everybody knows what everybody's trying to do; the government is trying to respond, in this instance, to the request by unions that they not be caught up in this huge net.

Would it have been so out of order to have called their counsel and said, "Look, have you got any ideas about the sort of amendment we have to make, the language we have to include, to ensure that trade unionists doing their daily activities aren't caught up in this?" There are no state secrets being given away or being revealed, and even then it just boggles the mind. The committee has made an effort to address it, but it's lost the committee 30 minutes of scarce time. Had OPSEU's counsel, who was here making the presentation, been called, he would have been pleased to have assisted the government in a very fair way in the drafting of this bill.

I'm not going to debate this matter any further. As I say, I continue to be concerned about it. I think it's problematic, but the government is going to have to decide whether or not they want to pass it. I'm talking about their amended amendment.

Mrs. Elliott: Although we do understand the intent of this paragraph and appreciate the efforts that have been made to be as comprehensive as possible, our view is that there is another important category or group that has not been excluded as not providing legal services, and that is the title insurers, who do provide documents and prepare documents routinely in the course of their business. That is included in a subsequent amendment that we are proposing. For that reason, I'm not able to support this amendment as it's presently drafted.

The Chair: Any further debate?

Mr. Kevin Daniel Flynn (Oakville): Just following up on that issue for the sake of clarity, I wonder if I can

ask a question of staff. Mr. Twohig, my understanding was that title insurers, including the preparation of documents, would be excluded by these exemptions that are being proposed. If we could hear from staff on that?

1110

Mr. Twohig: Thank you, Mr. Flynn and members of the committee. It's my view that title insurers are regulated by the superintendent of insurance when they're—

The Chair: Sorry. I'm not sure if Hansard has your name. Could you just state it?

Mr. Twohig: My name is Twohig. I'm from the Ministry of the Attorney General, policy division.

When title insurers are acting within the scope of their activities that are regulated by the superintendent of insurance, they would be covered by this exemption.

Mr. Flynn: That includes the preparation of documents?

Mr. Twohig: It would seem that, yes, it would.

Mr. Flynn: It would seem that way or it would?

Mr. Twohig: It would.

The Chair: Any other debate?

Shall government motion 48, as amended, carry? It's carried.

Next is PC motion number 49.

Mrs. Elliott: I move that subsection 2(10) of schedule C to the bill be amended by adding the following subsection to section 1 of the Law Society Act:

“Not practice of law or provision of legal services

“(7.1) For the purposes of this act, the following activities shall be deemed not to be the practice of law or the provision of legal services:

“1. Activities performed by an individual in relation to,

“i. a document that is solely for the individual's own use, or

“ii. a document or proceeding to which the individual is a party.

“2. Activities performed without charging a fee.

“3. Activities that are regulated under another act of the Legislature or an act of Parliament and that are performed by an individual who, or by an employee of a individual, corporation or organization that, is licensed or otherwise authorized to perform those activities by the government of Ontario or any of its agencies, boards or commissions.

“4. The preparation of documents by insurers of title to real property.”

As previously stated, it's our submission that the previous amendments did not sufficiently address the position of title insurers. In our view, this needs to be clarified by the specific exclusion contained within this amendment.

The Chair: Any other debate on PC motion 49?

Mr. Flynn: Just looking at number 4 of the amendment that's on the floor, and to be clear once more, my understanding is that number 4 would be unnecessary and redundant because our staff have just told us that in the preparation of documents by insurers of title to real property, they're already excluded.

The Chair: Any other debate? Seeing none, shall PC motion number 49 carry? All those in favour? Opposed? Lost.

Any other debate on schedule C, section 2, as amended? Shall—

Mr. Kormos: One moment. I suppose I'm going to reserve most of my comments for schedule C in its entirety at the end.

Mr. Zimmer: That would save time.

Mr. Kormos: It all depends on how long—you see, if I wait for all of my comments to the end, I might have reached that tipping point where I'm just bubbling over, where we could end up involving more time, Mr. Zimmer.

Mr. Zimmer: Anything to save time so we can finish our work today.

Mr. Kormos: It's not my job to save time. It's my job to exhaustively scrutinize the government's work. Mr. Zimmer may well understand that in due course, in the course of his career, and it will be fascinating to watch him perform that role.

It's just incredibly regrettable that the government chose to draft legislation that, notwithstanding the amendment that was just passed—the government's amendment that was just passed—sends out that huge net and then says, “Well, but at the end of the day we'll let the law society decide who is and who isn't covered,” because the amendment is as it stands, but certainly not exhaustive. I'm regretful that the government is ramming this bill through with such haste and without adequate contemplation and consideration.

The Chair: Any other debate? Seeing none, shall schedule C, section 2, as amended, carry? Carried.

Schedule C, section 3: PC motion number 50.

Mrs. Elliott: I move that section 1.1 of the Law Society Act, as set out in section 3 of schedule C to the bill, be amended by adding the following subsection:

“Providers deemed licensees

“(13) Every person who, immediately before the amendment day, is at least 60 years old and has been in the business of providing legal services in Ontario as a non-member for at least five years shall be deemed to become, on the amendment day, a person licensed to provide legal services in Ontario and to hold the class of licence determined under the regulations.”

The purpose of this amendment is to provide grandfathering, as requested by the Ontario paralegal society, and to give them some degree of certainty, by inserting this into the legislation, that they will have at least some measure of grandfathering that they can depend upon.

The Chair: Any other debate? Seeing none, shall PC motion 50 carry? All those in favour? Opposed? It's lost.

Is there any other debate on schedule C, section 3? Seeing none, shall schedule C, section 3, carry? Carried.

Any debate on section 4?

Mr. Kormos: I wonder if the parliamentary assistant could explain this amendment to us.

The Chair: Mr. Zimmer?

Mr. Zimmer: Mr. Twohig?

Mr. Kormos: Please, don't put him to the trouble. It's adding the title "Part I" to the bill. I was being facetious, for Pete's sake.

Mr. Flynn: We can't tell with you.

Mr. Kormos: Thank you very much, Chair.

The Chair: Shall schedule C, section 4, carry? Carried.

Schedule C, section 5: government motion number 51.

Mr. Zimmer: I move that subsection 2(2) of the Law Society Act, as set out in section 5 of schedule C to the bill, be amended by striking out "and" at the end of clause (b), by adding "and" at the end of clause (c) and by adding the following clause:

"(d) the persons who are at that time licensed to provide legal services in Ontario, who shall be referred to as paralegal members."

The Chair: Debate?

Mr. Kormos: One moment; let's find this.

When the word "members" is used here, if the parallel—I'm looking at the section in the government bill: "the persons who are at that time licensed to practise law in Ontario as barristers and solicitors." That's 2(2): "The society is a corporation ... and its members at a point in time are...." Am I on the right section here?

Interjection: Yes.

Mr. Kormos: It says, "the person who is the treasurer ... the persons who are benchers ... the persons who are at that time licensed to practise law in Ontario as barristers and solicitors," and now "(d) the persons who are at that time licensed to provide legal services in Ontario, who shall be referred to as paralegal members."

Is the government, by this amendment, making paralegals members of the law society?

Mr. Zimmer: Yes.

Mr. Kormos: But it's also incorporating the title "paralegal" or "paralegals," which has been something that was raised around the course of the hearings. What I'm worried about is the lack of parallel between clause (c) and this new clause (d). It seems to me that when you're building a section like that, its members at a point in time are "(c) the persons who are at that time licensed to practise law in Ontario as barristers and solicitors;" and then, "(d) the persons who are at that time licensed to provide legal services in Ontario."

1120

There are other references in your amendments to "paralegal" as a title. One of the interesting things of course is that "lawyer," it has been noted, especially by law society types, isn't used in legislation, existing or proposed. Even though the government is saying, "Paralegal members are members of the law society," there is nothing here that indicates the extent to which they are members, there is nothing here that indicates the extent or whether or not they have a vote, because that is not resolved by this section, is it? That's all unresolved. It's inoffensive, in and of itself, except that it could be a bit of a red herring. It could be a bit of a con, a sop, designed to create a comfort level amongst paralegals that they shouldn't quite have yet because we don't know

what kinds of members. It's like being a fifth-degree Mason—I'm going to get in trouble because I don't know anything about Freemasonry—versus a neophyte Mason who is at his or her first meeting, like a person who is in the 11th step of a 12-step program as compared to just being present at their first meeting.

I'm going to support the amendment, but I remain suspicious because it doesn't talk genuinely about what membership for a paralegal in the law society means. I'm going to support it because at least it incorporates the term "paralegal," although the act doesn't incorporate the term "lawyer." Go figure.

The Chair: Thank you, Mr. Kormos. Any other debate? Seeing none, shall government motion 51 carry? Carried.

Any debate on schedule C, section 5, as amended? Seeing none, shall schedule C, section 5, as amended, carry? Carried.

Any debate on sections 6 to 15? Seeing none, shall sections 6 to 15 carry? Carried.

We're now at schedule C, section 16. Government motion 52.

Mr. Zimmer: I move that subsection 16(6) of the Law Society Act, as set out in section 16 of schedule C to the bill, be amended by striking out "Legal Services Provision Committee" and substituting "Paralegal Standing Committee".

The Chair: Any debate?

Mr. Kormos: Dare I say it, Mr. Zimmer? Whoop-dee-doo; big deal; so what? This should be a little embarrassing for the government, that this is the extent to which they're going to respond to concerns that have been raised. This is, as you well know, window dressing. This is designed to create an illusion of paralegals being more included in the law society regime. But it's not about changing the names of committees, for Pete's sake, because you amended section 16, for instance, but you don't deal with 16(1): "Two persons who are licensed to provide legal services in Ontario shall be elected as benchers in accordance with the bylaws"—two. You didn't even go to the trouble of saying, "Two paralegals who are licensed by the law society." That shows you how shallow these amendments are and how the government is going to try to market them, saying, "Look what we've done for the paralegals. Look how we've responded to their concerns." Because we know that the 40 benchers who are elected by lawyers are elected regionally. That means, for instance, down where I come from—and we're talking about Niagara; I can't remember if Hamilton is a part of that area for electing a bencher or not—people run for these positions and you tend to know the lawyers in your area, if you're a lawyer, and you use that to decide who you're going to vote for.

Two benchers shall be elected who will be paralegals. Is there an assurance here that it's only paralegals who will be voting for the paralegal benchers? No. Think about it: We're not assured that it won't be lawyers electing the paralegal benchers. That's number 1.

Number 2: Two benchers for all of Ontario. What are people going to be expected to do? To campaign across the province? Let's look at it from a practical point of view. Mrs. Elliott knows this as well. If you're running as a bencher in your region as a lawyer, you get a list of the lawyers in that region—there are publications that have them—and you campaign by, let's say, sending out a mailing or doing a phone call. Fair enough. Mind you, in the city of Toronto it's an expensive and onerous task in and of itself, but how does a paralegal campaign across the province, knowing full well that the incomes of paralegals are, by and large, a percentage of that of law officers? That's one of the reasons they're being welcomed into the legal communities, because they can provide lower-cost legal services. How does a paralegal, then, campaign across the province? We'll divide the province into two? Oh, great. So somebody has to campaign in Kenora, Rainy River, Timmins, James Bay, North Bay, and then somebody else has to campaign in the rest of Ontario.

I don't think it's fair to the paralegals who are going to have a regulatory regime established. It very much appears that the regulatory regime is going to be one operated by the law society. Okay, there you go. I don't think it's fair to paralegals to say, "Oh, well, we'll rename the legal services provision committee, but you can only elect two benchers," without even telling them how they're going to be elected. That's not fair, is it? I don't think that's fair at all.

The problem is, if the law society had laid out in fair terms—and I'm not just talking about their task force on paralegal regulation but for the purpose of debate so that it could be a part of the legislation, because you see, the task force report is nothing but that, the task force report. At the end of the day it's still up to the law society, with its two paralegal benchers, to determine things like scope of practice, to write and pass the bylaws that determine how paralegals will be elected. Who wouldn't vote for this amendment? But at the end of the day, it's pretty Mickey Mouse.

Mrs. Elliott: Inasmuch as we have proposed an identical amendment, we will be supporting this one. However, I do still have an overriding concern about the measures that should be taken to protect the interests and concerns of paralegals within the proposed operating structure. So subject to those comments, we will be prepared to support this amendment.

1130

The Chair: Any further debate? Seeing none, shall government motion 52 carry? Carried.

Next is a PC motion.

Mrs. Elliott: We won't be proceeding with this.

The Chair: Okay, that's withdrawn.

Next we're at government motion 54.

Mr. Zimmer: I move that subsection 16(7) of the Law Society Act, as set out in section 16 of schedule C to the bill, be amended by striking out "legal services provision committee" and substituting "paralegal standing committee."

The Chair: Any debate? Seeing none, shall government motion 54 carry? Carried.

Motion 55 is a PC motion.

Mrs. Elliott: Again, since it's the same as the amendment that was just passed, I won't be proceeding.

The Chair: That's withdrawn.

Shall schedule C, section 16, as amended, carry? Carried.

Any debate on section 16, as amended?

Mr. Kormos: I'm not sure that that's not moot now that the section is carried.

Point of order, Mr. Chair: Is the call for debate moot now that the section has passed, notwithstanding the failure of the Chair to call for debate on the section before you called the question?

The Chair: I just went back and asked for debate.

Mr. Kormos: No, but I'm addressing you on a point of order. Is it in order for the Chair to call for debate on a section that has already been passed, notwithstanding that the Chair failed to call for debate before calling the question?

The Chair: Mr. Kormos, as I'm sure the committee must appreciate, I assumed that whatever debate needed to take place did take place. I made an error and I've gone back and asked for any further debate. Any comments that you may have?

Mr. Kormos: I've made a point of order and I need a ruling on it.

The Chair: Would you like to make any comments after the fact that it has been carried?

Mr. Kormos: I made a point of order. I need a ruling on it, Chair. I'm entitled to a ruling. If it's not a point of order, the Chair should just say that it's not a point of order.

The Chair: It's not a point of order. The section, as amended, has carried.

Are there any comments further to that? Any more comments, Mr. Kormos?

Mr. Kormos: On the point of order, no. You've already ruled on the point of order.

The Chair: Before we move on, would you like to make any comments?

Mr. Kormos: Yes. In view of the fact that once a question has been called and a section has either carried or for that matter been defeated, it's not in order to call for debate on that section. You've ruled that. I accept that ruling, and quite frankly agree with it. It means that it's imperative that the Chair call for debate before calling the question, with respect. That wasn't a point of order; it was just a comment that you invited.

I expect we're going to move on to the next section now.

The Chair: Thank you, Mr. Kormos. We're at schedule C, sections 17 and 18. Is there any debate on sections 17 and 18?

Mr. Kormos: Yes, there is. One of the things that this deals with is the appointment of lay benchers. I don't think anybody quarrels with lay benchers. That's where the public inserts itself into the law society's affairs and

into the law society's operation. I would have liked to see this bill—because those are appointments made by the government; once again, political appointments. It would be downright naive on the part of a government to appoint people as lay benchers who are not going to at least be comfortable with the government agenda, if not downright advocate it. So I see this as a lost opportunity in terms of the eight political appointments. I see this as a lost opportunity in that the government didn't use this amendment, this bill, as a way of ensuring that those appointments are less than political appointments and therefore more truly representative of the population of Ontario and less likely to be people who are appointed because the government is confident that they will convey and comply with the government's line of the day.

The Chair: Any other debate?

Mr. Zimmer: I just think it's important to note that under sections 17 and 18, in fact any elected bencher is eligible to be elected treasurer. That's whether the person is licensed to practise law or the person is licensed to practise legal services. In effect, a paralegal could become the treasurer of the law society.

Mr. Kormos: Hansard should just show that Kormos is stifling laughter.

The Chair: Any further debate? Seeing none, shall sections 17 and 18 carry? Carried.

Section 19, government motion 56.

Mr. Zimmer: I move that subsection 25.1(1) of the Law Society Act, as set out in section 19 of schedule C to the bill, be struck out and the following substituted:

“Paralegal Standing Committee

“Paralegal standing committee

“Establishment

“25.1(1) Convocation shall establish a standing committee to be known as the paralegal standing committee in English and Comité permanent des parajuristes in French.”

Mr. Kormos: This is just out of interest, because of course now that we're talking about paralegals—we never had a chance—I don't recall any input as to the proper Canadian French version of “paralegal.” Just as much out of curiosity and self-edification as anything else, is this a term that's used in Quebec? Is this a literal translation? I really don't know what the source of “parajuriste” is. Do you know?

Mr. Zimmer: Mr. Twohig?

Mr. Twohig: I'm going to have to turn to legislative counsel, who so ably assists us.

Ms. Joanne Gottheil: I would have to go back and get the advice of our French team. I can't answer that. But if you'd like, we can go back and ask them.

Mr. Kormos: I suppose the only interest I have literally in terms of the bill is, is this a neologism or is it a word that is in use in a practical way, obviously in French-language Canada? I'm not going to oppose the motion, but if we could, at some point, hopefully today, get that—who knows; the government may have to come back and move amendments to amend all these French-

language versions. I don't know; it would just be interesting to know. It's good to know these things. Down where I come from, we have a lot of francophones.

Ms. Gottheil: Okay. We'll get back to you.

The Chair: Any other debate? Seeing none, shall government motion 56 carry? Carried.

PC motion 57.

Mrs. Elliott: I move that subsection 27(1) of the Law Society Act, as set out in subsection 23(1) of schedule C to the bill, be amended by striking out “bylaws” at the end and substituting “regulations”.

Mr. Zimmer: That's a duplicate.

Mrs. Elliott: Oh, I'm sorry. We won't be proceeding with this.

The Chair: PC motion 57 is withdrawn. It's a duplicate.

Mr. Kormos: Chair, Mrs. Elliott and I are here all on our own. We don't have huge entourages of hangers-on, high-priced staff and the well-trained bureaucracy here helping us and guiding us along; we're here all by ourselves. We're here in the trenches with our shirt sleeves rolled up, without any fancy tools and all the high-priced resources that we dearly would love to have.

1140

The Chair: Is that final debate? Any other debate on this?

Mr. Kormos: What are we dealing with now?

The Chair: We're dealing with any further debate on section 19, as amended.

Mrs. Elliott: I should have withdrawn motion 57 before proceeding to 58.

Mr. Kormos: Gotcha. That's right. Yes. Once again, folks, here we are. We're dealing with section 19. Once again, the Attorney General for Ontario shall make appointments of the five persons who will be paralegal members of this committee. Paralegals feel, by and large, that they've been at war with the Attorney General. They really do. They don't feel right now that the Attorney General has been their friend or that the Attorney General has been particularly accommodating in terms of listening to them. They feel that way. I don't purport to speak for every single one, but my impression is that paralegals don't get the sense right now that the Attorney General, Mr. Bryant, has been particularly attentive to their concerns, their fears and what they perceive as their interests.

So here you go. This seminal group, the paralegal membership of it, is going to be political appointments of the Attorney General. It just seems to me, once again—because there's going to have to be an effort now, whatever regulatory regime flows from this, to make it work. I'm confident that paralegals will do anything and everything they have to and can, however distasteful and fearful they may find the exercise, to make the regulatory regime work.

Surely to goodness, the government could start to send out some messages to them, and this is an opportunity to do it, rather than simply to say, “Five persons appointed by the Attorney General for Ontario.” It seems to me the government could have amended this to ensure that there

would be some comfort level, some assurance, if only symbolic, to paralegals that there wasn't going to be cherry-picking on the part of the government to ensure that there wasn't going to be any intense or serious debate in this committee. I agree this committee's going to have potential to have great impact, and I suspect the debate should be a very strong one and heated—it should be—to resolve the conflicts, perceived or real. That would go a long way towards making the regulatory regime work. But when these people are going to be hand-picked, I suspect that the fear of many paralegals is that the paralegals who are going to be appointed by the Attorney General are going to think, speak, eat, sleep and breathe in sync with the view of the government around this matter. Again, Mr. Parliamentary Assistant, just a lost opportunity.

There's a huge schism out there between paralegals and the law society that this committee process could have helped bridge. But to the contrary, it simply made it wider, because paralegals don't feel that this committee has done much to respond to them and their concerns. Thank you, Chair.

The Chair: I believe leg counsel would like to make a comment.

Ms. Gottheil: We've been advised by the French team that "parajuristes" is the most commonly used term. It is used in Quebec and it is also used at the federal level.

Mr. Kormos: That's a good thing. Thank goodness the government has the skilled counsel of Ontario francophones and at least listens to them. Not to paralegals. Thank you very much, Madam Counsellor.

Ms. Gottheil: You're welcome.

The Chair: Thank you, Mr. Kormos.

Any further debate on section 19? Seeing none, shall section 19, as amended, carry? That's carried.

Sections 20 to 22: Is there any debate?

Mr. Kormos: I'm almost inclined to ask Mr. Zimmer to explain section 21, but I'll leave that alone. We're dealing with 21 through 22?

The Chair: 20 to 22.

Mr. Kormos: Yes. Under "Prohibitions and Offences" in section 22, particularly subsection (8): "This section applies to a person, even if the person is acting as agent under the authority of an act of the Legislature or an act of Parliament." That's 26.1 of the proposed act.

This brings up the CSIC issue. We had, as you know—and Mr. Zimmer was interested in this because of some of his own background and expertise—representations made to us by the brass from CSIC: John Ryan and Ross Eastley. The problem there—legislative research assisted us to a certain extent, although not all the questions were answered—is that CSIC says that because its members are regulated by CSIC, they can't be regulated by the paralegal regulatory regime in Ontario. The prohibition section incorporates paragraph 8 saying, "This section applies to a person, even if the person is acting as agent under the authority of an act of the Legislature or an act of Parliament." I appreciate that. That's not a bad section; that's a good section, because it says you're not

going to sneak out of the regulatory regime by virtue of being a federally authorized entity.

I suppose this may well—I'd ask counsel to help us or the policy people to help us in this regard. I presume this also addresses, for instance, the Criminal Code provisions that allow an agent to appear. Because somebody's appearing in criminal court pursuant to the Criminal Code as an agent, that does not preclude the province from regulating that person as a paralegal.

We still have a problem. There's a real contradiction between what CSIC said, what the regulations appear to say and what the federal government says. CSIC says that everybody who does immigration counselling, including preparation of forms from the get-go, is covered by the regulation which compels them to be members of CSIC or a member of a law society. That then goes back to the membership amendment that the government made.

By virtue of making paralegals members of the law society, is the government intending to make the members of the law society for all purposes, including definitions of who can practise before the IRB, for instance? Remember, they excluded members. You didn't have to be a member of CSIC if you were a member of the law society, right? I think that's a fair interpretation of that.

1150

So let's understand: Is the government then saying paralegals in Ontario, as members of the law society—does it say "a member of the law society" or call it "a member of the bar"? I think it was "law society." Are they then going to be allowed to appear in front of the immigration review board because they're now members of the law society, even though we don't know the extent to which they will be members of the law society?

I'd never met the two gentlemen who were here on behalf of CSIC the other day, but I wasn't knocked back in my chair by their presentation. It was a pretty defensive one, somehow suggesting that—I checked the Humber College curriculum for the educational prerequisites for CSIC. It's not bad, but please, give me a break, it's not particularly demanding in terms of the curriculum, right? It's certainly no two-year paralegal course.

Can we get any help here in terms of subsection (8) of what will be this proposed 26.1, the federal issue, the CSIC issue? Are immigration consultants going to be regulated? Is it going to be possible for them to be regulated subject to the law society using its bylaws to exclude them with this legislation? I dearly, dearly want to know that—and I think folks want to know that too—because I think they should be.

Mr. Twohig: The section prohibits unlicensed paralegals unless they could establish that the provincial licensing scheme contained in this bill conflicted with paramount federal legislation. That being the case—and I'm not familiar with all the details of CSIC—it seems to me that they're regulated; immigration consultants are regulated by CSIC. So it would seem that the federal government has occupied the field and its legislation has paramountcy.

Mr. Kormos: Thank you very much. I'm certainly not going to debate that with you, because you know this stuff. But then subsection (8) "applies to a person, even if the person is acting as agent under the authority of an act of the Legislature or an act of Parliament." So I suppose the question is that the regulation that requires people to be members of the CSIC or members of a law society is what authorizes those people to act. It's not CSIC that authorizes those people to act. Do you understand what I'm saying? Do you think subsection (8) here is going to catch immigration consultants who are members of the CSIC? Because it says, "This section applies ... even if." Is that what it was intended to do?

Mr. Twohig: I'm sorry. Your question is, would this oust the authority of CSIC?

Mr. Kormos: No. What's the intention of subsection (8)? It's "This section applies ... even if the person is acting as agent."

Mr. Twohig: If a provincial statute or an act of Parliament purports to allow a person to appear before a court or a tribunal but goes no further to regulate the conduct of that person, then they're caught by this legislation. In the case of immigration consultants, it appears that the federal government has gone further and purports to regulate them. So to the extent that the province can't conflict with paramount federal legislation, it would appear that immigration consultants under CSIC wouldn't be covered by this.

Mr. Kormos: Again, paramountcy was the issue dealt with in that British Columbia decision that went to the Supreme Court of Canada, the paramountcy issue.

This is troubling. It's not a criticism; at this point, I'm not criticizing the legislation. But it seems clear from the regulations that the federal regulation only requires CSIC to regulate those people who "appear before," because it uses language like "before." It's only when the matter is before this tribunal, like the IRB, that a person has to be a CSIC member. CSIC says, "Oh, yeah, we regulate even those people who help people fill out immigration applications and visa applications." But that doesn't appear to be what the federal regulation says, nor does it appear to be what the federal government thinks, because they're certainly not pursuing any of those people and they're all over. That's where some of the most tragic scams are being performed on consumers who are being lured into these places and being charged outrageous fees for minimal work and not being served well.

This is really problematic. I want the province to be able to regulate those people. I suppose I'm calling upon the parliamentary assistant to ensure that the Ministry of the Attorney General—I don't know what more you can put into the legislation to guarantee it, but it's one of those intergovernmental matters that I submit to you should be addressed, and promptly. If the federal government purports to use CSIC—I'm not happy with the CSIC regulatory regime overriding the provincial regulatory regime, but the law, as has been told to us, is the law, and that's the state of affairs. But we had better get some clarity on whether the federal regulation extends to

all immigration consultants. I mean, is Jimmy K going to be put out of business or is he going to be allowed to continue to do that stuff?

I really call upon the government. This is a matter that should be addressed. I expect to be following up with the AG on this matter over the course of the next couple of months. I think it's important. Why should paralegals be submitted to what I anticipate and hope will be a pretty onerous regulatory regime with some pretty high standards, yet people fleecing new Canadians or potential new Canadians can wander around scot-free because either they're not covered or because the federal government simply doesn't bother prosecuting them?

The Chair: Further debate?

Mr. Kormos: Yes, Chair. Of course, this section contains the notorious subsection (5), the oft-referred-to subsection (5), and that is "to the extent permitted by the bylaws" of the Law Society of Upper Canada. That has been a subject of concern, and that is to say that the failure of this committee, the failure of the government, to entertain any debate around scope of practice has left a huge gap in these proceedings. For that reason, I will not support section 19. Subsection (5), the delegation of the authority to the law society—

Mr. Zimmer: What section are you on?

Mr. Kormos: I'm at this section.

Mr. Zimmer: Section 19, did you say?

Mr. Kormos: I said section 22.

Mr. Zimmer: Okay.

Mr. Kormos: It comes right after section 21, which I didn't ask you to explain and will not be supporting.

The Chair: Any further debate? Seeing none, shall sections 20 to 22 carry? Those are carried.

It's now 12 o'clock. The committee will break for lunch. We'll be back at 1 p.m.

The committee recessed from 1159 to 1301.

The Chair: Sorry about the delay, folks. The committee is called back to order. I believe we're on schedule C, section 23. We're on PC motion 58. Mrs. Elliott is here. Just give her a second to take a seat.

Mrs. Elliott: I move that subsection 27(1) of the Law Society Act, as set out in subsection 23(1) of schedule C to the bill, be amended by striking out "bylaws" at the end and substituting "regulations".

The purpose of this proposed amendment is to highlight the importance of having the regulations set the rules here, as presented by the Attorney General, rather than having bylaws set by the Law Society of Upper Canada. It's important that the Attorney General be involved in setting these regulations.

The Chair: Any debate? Seeing none, shall PC motion 58 carry? All those in favour? Opposed? It's lost.

Moving on to PC motion 59.

Mrs. Elliott: I move that subsection 27(3) of the Law Society Act, as set out in subsection 23(1) of schedule C to the bill, be amended by striking out "bylaws" wherever it appears and substituting in each case "regulations".

Again, this has been proposed for the reasons set out in the previous amendment.

The Chair: Any debate? Seeing none, shall PC motion 59 carry? All those in favour? Opposed? Lost.

PC motion 60.

Mrs. Elliott: I move that section 23 of schedule C to the bill be amended by adding the following subsection:

“(2.1) Section 27 of the Act is amended by adding the following subsections:

“Appeal to peer review committee

“(5.1) Despite subsection (4), if a person whose application for a licence is refused by the hearing panel was in the business of providing legal services in Ontario as a non-member for a continuous period of at least two years immediately preceding the day subsection 2(6) of schedule C to the Access to Justice Act, 2005 came into force, the person may, within two years after the refusal by the hearing panel, appeal the refusal to a peer review committee established by the society.

“Establishment and rules

“(5.2) The society shall establish peer review committees for the purposes of subsection (5.1) and shall make rules governing the practice and procedure before those committees.

“Decision binding

“(5.3) A decision of a peer review committee is final and binding.”

The purpose of this amendment is to allow some measure of comfort, I suppose, for paralegals to ensure that they will have the opportunity to have the matter heard by a peer committee and have the opportunity to be brought back into practice if they're so eligible as deemed by their peers.

The Chair: Any further debate? Seeing none, shall PC motion 60 carry? All those in favour? Opposed? That's lost.

Any debate on section 23? Seeing none, shall schedule C, section 23 carry? That's carried.

We'll move on to 24 and 25. Any debate?

Mr. Kormos: I appreciate, in 24, the repeal of 27.1 and the information provided that the court no longer relies upon the law society for information about membership. I just found that an intriguing point. Who do they rely upon, then? Again, this is not a criticism of the bill; it's just an intriguing point.

Mrs. Kwon: We've been advised that they rely on the individual lawyers themselves to notify the courts.

Mr. Kormos: Of?

Mrs. Kwon: Of their status.

Mr. Kormos: That's fascinating. It's the honour system. That prompts any number of punch lines, because of course we're talking about the world's second-oldest profession. That means there's no clearing house. Down where I come from in Welland, everybody knows everybody, right? But here in Toronto you've got a huge courtroom community with people coming in and out all the time as lawyers, or presenting themselves as lawyers. It's just an interesting sort of thing, because if that isn't going to happen with lawyers, I presume it's not going to

happen with paralegals too, right? So how is an adjudicative body going to have quick access—if they know somebody, they know that person is a paralegal, licensed, etc. How are they going to know that Jane Doe or John Smith is, in fact, a licensed paralegal?

Mr. Zimmer: I think the practice now is that on pleadings, statements of claims, notices of application and so on, the lawyer has his name underneath it. Now they put their law society number.

Mr. Kormos: Like mug shots, where the number is underneath your portrait.

Mr. Zimmer: So to speak.

Mr. Kormos: Okay. It's just interesting, because again we're talking about introducing a whole new community of people into a newly regulated regime. We're going to have a huge community of paralegals; for instance, graduates and newly licensed paralegals who are strangers, if you will, to the judges, to the justices of the peace, to the tribunal chairs. I just find it strange that there isn't some way that a court clerk or a tribunal clerk can't discreetly—you don't want to go around challenging and embarrassing people or saying “Show me your license before you start making an argument.” Let's say that if there's a suspicion—they don't know who the person is—they just get on a computer, hopefully, presumably to the regulator and say, “Is Peter Kormos from down in Welland, who is presenting himself as a paralegal up here in Toronto, in fact a licensed paralegal?” It just seems that it would be so much more secure to have the system able to do that. There's no secret. There shouldn't be any secret about who is a member of these organizations. It's not private information that I'm a member of the law society. It's just a comment.

1310

The Chair: Is there any further debate on section 24 or 25?

Mr. Zimmer: Carried.

Mr. Kormos: That's not what he said. The Chair is working very hard, Mr. Zimmer—he really is—trying to make sure this thing goes along properly, and here you go; you throw a wrench into the works. Ah, yeah.

The Chair: Shall schedule C, sections 24 and 25 carry? Carried.

Schedule C, section 26. PC motion 61.

Mrs. Elliott: I move that section 26 of schedule C to the bill be amended by adding the following section to the Law Society Act:

“Commissioners for taking affidavits

“29.1(1) In addition to the persons set out in subsection 1(1) of the Commissioners for taking Affidavits Act, every person who is authorized to provide legal services in Ontario is, by virtue of office, a commissioner for taking affidavits in Ontario.

“Repeal

“(2) This section is repealed on the day subsection 3(1) of schedule A to the Government Efficiency Act, 2002 comes into force.”

If this is truly to be an access to justice bill, this is a really important amendment, because much of the work that paralegals do involves the swearing of affidavits, which then requires the person for whom they're working to go and see a lawyer at further expense. So if they're going to be regulated and if they're going to be licensed in order to provide legal services, this is a necessary additional power that they should be given in order to carry out their duties.

The Chair: Thank you, Mrs. Elliott. Any further debate? Seeing none, shall PC motion 61 carry? All those in favour? Opposed? Lost.

Any debate on section 26? Mr. Kormos.

Mr. Kormos: Yes, there is, very briefly, once again. This is where "an officer of every court of record" rears its head and is confirmed. It appears to be a case where the government is sticking with the original proposal, that the barrister and solicitor members of the law society are officers of the court, even though it appears to be paying at least lip service to paralegals by calling them members of the law society, because: When is a member not a member? Probably when it's a paralegal. We'll have to wait and see. I suspect that that's going to be the case.

Fair enough. That, then, begs the question: Why are barristers and solicitors, as members of the law society, officers of the court and paralegals aren't? I apologize if that was somewhere in the material we got, but I still haven't received the material on the officers of the court.

It's just very strange. Clearly there is an enhanced status and, I presume, a set of obligations. I've always understood that, as an officer of the court, you have enhanced obligations, but for the life of me—and there are two other lawyers on this committee who have been practising for some amount of time—I can't articulate what it means to be an officer of the court. Either of those two other lawyers could really show me up by giving a straightforward and concise explanation of that, and neither seem to be jumping at the opportunity.

Is there no advantage to making paralegals officers of the court? If they're going to be working in that court function—because it implies to me "obligations to the court," and that, when you're directed by the court, you will do certain things.

Silence. We're voting on something that none of us have any idea about whatsoever. This is a perfect example. We're voting on a section, and I'm not saying it's bad that we don't know about it, but—and again, legislative research has been busier than a one-armed paper hanger responding to various requests—we're voting on an issue we know nothing about whatsoever, and that, to me, is not the way we should be conducting ourselves. If there's a good reason why paralegals shouldn't be officers of the court, then somebody just say so and I'll join you in supporting the section that reinforces the role of barristers and solicitors as officers.

The public watches this and shakes their heads. They shake their heads. We're paid a great deal of money. We have some pretty significant budgets, each and every one of us as MPPs. We're here in this committee. I recall

raising the issue about officers of the court vis-à-vis lawyers versus paralegals some time ago in this committee hearing. For whatever reason, we haven't had a research response. I find it incredible that the high-priced help—I'm talking about the MPPs here—are going to say, "Yeah, let's vote on something," and we have no idea what it means, by virtue of the exclusion of paralegals. I'll presume that there's a very good reason. Then just say so.

I'm embarrassed. I don't know if other members are embarrassed or not. I'm embarrassed. We're voting on a section that's going to exclude paralegals from the status of officers of the court and we don't know why. It's not a debate; it's not that some agree that they should and others say that they shouldn't. We simply don't know why. I don't know whether they should or shouldn't. If there was legitimate debate, I could even understand losing the argument when it comes to a vote. I understand that all right. But nobody knows, and we're voting on it. It's a hell of a way to develop policy in law.

I seek unanimous consent that this section, section 26 of the bill, which creates the new sections 29 and 30 of the act, be deferred until we can get some information about what it means.

Mr. Zimmer: No.

Mr. Kormos: He hasn't done it yet.

The Chair: Mr. Kormos is seeking unanimous consent to stand down section 26. Do we have unanimous consent? No, we don't have unanimous consent. Further debate?

Mr. Kormos: Yes. People are going to be voting on this without having the slightest idea what it means. I make that observation.

A recorded vote. Because I won't be voting on it without knowing what it means.

The Chair: Shall schedule C, section 26, carry? All those in favour?

Ayes

Balkissoon, Flynn, Van Bommel, Zimmer.

The Chair: Opposed?

It's carried.

I'm asking the committee—there are no amendments between sections 27 and 94—if we could block them together. Maybe we could take a small recess to look those over.

Mr. Kormos: An excellent proposition.

The Chair: We'll be breaking for a five-minute recess.

The committee recessed from 1319 to 1327.

The Chair: Sorry about the delay. I had a bit of a personal dilemma outside.

We have a request to deal with sections 27 to 70 as a block. Is the committee agreeable? Yes. Any debate on those sections, 27 to 70? Seeing none, shall schedule C, sections 27 to 70, carry? Carried.

We're going to section 71. Any debate?

Mr. Kormos: This is the compensation fund portion of the bill and the new act. We learned a little bit of the difference between monies paid out of the errors and omissions insurer, as compared to monies that are paid out of a compensation fund. Funding the compensation fund is one of the single largest financial burdens that legal practitioners have. Paralegals now are going to be drawn into funding a compensation fund, yet I don't know if it's going to be the same fund that lawyers fund and out of which compensation is paid when lawyers foul up.

There's already, insofar as I know, some dispute amongst lawyers as to who's paying or isn't paying their fair share, because there are certain types of practices of law wherein exposure is modest or minimal and other types of practices of law which higher numbers of claims are made against. Are paralegals going to be expected to contribute to this fund? Remember Orwell and the pigs and equality, "Some are more equal than others"? Paralegals are going to be members. Are they going to be members for all of the advantages and privileges of the law society or are they only going to be members for all the obligations and liabilities? Does the legislation make it clear that there are going to be two pools of money, one to be funded by members of the paralegal profession—I don't know—one to be funded by lawyers? I think paralegals would like to know. I think we have a responsibility, legislatively, to give some direction in that regard. Unfortunately, we didn't hear anything about the funding of the compensation fund. I heard some oblique references to it.

So here we are. We've got section 71 of the bill and we've got a section that talks about a lawyers' fund for client compensation, the various circumstances surrounding payout—I don't know. We don't have a whole lot about paralegals. We just don't. That's part of the problem here when this is being delegated. It's going to be addressed. What's the future for this fund and for payments? If we can get some help here in terms of reference to other sections, other parts of the bill, I'm pleased to hear them. Otherwise, this will go to a vote.

I asked what I thought was a reasonably fair question. I suspect that from time to time I ask unfair questions. I asked what I thought was a reasonably fair question, a reasonably relevant question. From time to time I ask irrelevant questions. I concede that. I asked what I thought was a reasonably serious question. From time to time I ask questions that are more hyperbole than legitimate queries. I concede that.

Mr. Zimmer: Give me a heads up when you're being serious.

Mr. Kormos: Yeah. I asked a question, but no answer. Let's put the matter to a vote.

The Chair: Any further debate?

Mr. Zimmer: On 71?

The Chair: Section 71, yes. Seeing none, shall schedule C, section 71, carry? Carried.

We're at consideration of sections 72 and 73. Is there any debate? Seeing none, shall sections 72 and 73 carry? Carried.

We're at section 74. Any debate?

Mr. Kormos: Yes. This is the section dealing with trust funds. This one I really can't recall. Are paralegals going to have trust funds or not going to have trust funds? Was that ever—

Interjection.

Mr. Kormos: Yes, help us with that.

Mrs. Kwon: Yes, they will have trust funds.

Mr. Kormos: Okay. Good. There. Whew. It's a red-letter day: The government offers up an answer. Thank you.

Of course, appreciating there was an answer, and I accept it, that isn't enough to provide me with an incredibly high comfort level with the bill. But I appreciate the answer.

The Chair: Any further debate? Seeing none, shall section 74 carry? Carried.

Now we're dealing with sections 75 to 84. Any debate on these sections? Seeing none, shall sections 75 to 84 carry? Carried.

Sections 85 and 86: Any debate?

Mr. Kormos: Let's do one at a time.

The Chair: Section 85: Mr. Kormos.

Mr. Kormos: As I understand it, this is the renaming of the bar admission course and, more broadly, simply talking about pre-licensing education and training. What we didn't discover—what we weren't told—was what the law society, as regulator, proposes to do in terms of pre-licensing education and training and/or programs of continuing legal education vis-à-vis paralegals.

There are two parts to this. One is the pre-licensing part. We weren't told that the law society is going to accept any responsibility whatsoever for performing that role. I'm not sure whether articling falls within the scope of this, because it says "training." I would argue that articling does fall within the scope of it, and the law society supervises articling, which I think is an excellent program in the legal profession for lawyers. I would be pleased to see or hear some discussion about the prospect of articling for paralegals.

I appreciate that, by virtue of its eliminating the bar admission course, this section creates the capacity for the law society to accommodate articling paralegals, but we haven't heard whether that's going to be among the things they are going to be doing as they undertake the role of regulating paralegals. We didn't even hear any strong comments about the need or desirability of articling for paralegals. Again, I'm going to make clear that I believe that if you're going to upgrade that profession and give it the status it deserves, then articling would be a very appropriate element of the pre-licensing requirement. But it wasn't discussed; it wasn't dealt with; it wasn't debated; we didn't hear input on it.

I have to tell you that I am very nervous about the possibility of there being a wide range of educational prerequisites. The public community colleges' two-year programs are going to be competing with private trainers—we heard from one of them—with a one-year program. They came here seeming to think that somehow

they were going to fall within the scope of accepted trainers. There's going to be a whole lot of pressure on the law society and the government from the private schools, with their expedited programs, which of course are attractive to people because they can get them done quickly and they're less expensive—one of the problems, of course, is the cost of schooling. I have great concerns about that. But of course we're not going to debate it here.

So there you go. The section is going to be put to a vote. It won't have been the subject matter of any inquiry by the committee; it won't have been the subject matter of any public discussion or of any contribution by persons with expertise. The government wants to forge ahead with it anyway. They're actually going to put section 85 to a vote.

1340

Mr. Twohig: I'll just indicate in a general way that the committee heard from Mr. Simpson, for one, and he talked about working with the colleges to develop programs. He didn't specifically refer to it, but in the report he did refer to, delivered September 23, 2004, recommendation seven provides that "Law society approved college programs must include an approved period of 'field placement' to provide students with workplace experience." They don't use the terminology "articling," but it sure sounds like articling.

Mr. Kormos: That's what is frightening about the task force on paralegal regulation document. You see, it's a recommendation. Is it a recommendation, or is it etched in stone, because this same document is going to preclude paralegals from acting on behalf of litigants in family matters. I hear what you're saying, sir, and thank you for your reference to the document. Maybe that speaks volumes, then. Maybe those paralegals who hoped to work with moms who are being beaten and driven out of the family home but can't afford a lawyer's counsel and who would like to be able to rely upon a well-trained and experienced paralegal for some basic level of service in the Family Court are not going to be given that opportunity. I read recommendation one the scope of practice, and it specifically excludes family law.

What's going on here? Is this above board, or is this all a wink-wink, nudge-nudge done deal? Well, is it? I don't think that's an unfair question, because here we're being told, "Rely upon the task force recommendation." Well okay, I will. But when I rely upon the task force recommendation, I see some prejudgment about the ability of paralegals to assist low-income women in the provincial court, family division, the one that's more easily, more readily accessible, the one where a woman who has been beaten and fears for her life can go and hopefully get a speedy peace bond, to use the colloquial term, and a speedy interim order for custody of her kids.

Surely there can be training programs for paralegals that could train paralegals to perform those levels of family law service. I don't know, and I'm not suggesting, that the current programs do. But surely a program could be developed with specialization that would permit para-

legals to provide the basic, the first-instance stuff. If there's more complex stuff—if there's stuff around property, if there's stuff around getting children's welfare and so on—regulators may decide not to let paralegals perform those roles.

So that's exactly what I've done, Parliamentary Assistant: I've looked at the recommendations and looked at the subcommittee report. On the one hand, I say it's but recommendations; on the other hand, the suggestion from the government is that we should be able to rely on it as the design that's intended to be implemented. That's why people here are concerned about the fact that there wasn't any debate around scope of practice.

Again, I'm trying to be fair when I say that I don't know whether paralegals should be able to do family law stuff, and if they are permitted to do it, to what extent they should do it. But I'd surely love to entertain the prospect and hear the arguments for it, because I know there's a need for it. What we can't do is dispute the claims, clearly made, about the need for economical advocacy in the Family Court.

Let's go one further, if you want to talk about this report: provincial offences matters, not summary conviction matters in the provincial court, criminal division. Again, I'm not arguing for that. I don't know that current training programs—because I've made the comment that the complexities of a defence to a common assault can be as intricate as a defence to an armed robbery or a murder. The same level of skill could well be necessary. It gets back to peace bond applications. A neighbour dispute where there's an application for a peace bond: Does that require—where there's no criminal record or criminal conviction, as happens in provincial court, criminal division, and it's pursuant to the Criminal Code—a lawyer, if somebody can't afford to hire one or doesn't want to hire one, or could a paralegal be trained?

This government believes that justices of the peace don't need any legal training to be appointed justices of the peace, but it insists that paralegals have to have training, and I agree with that. I'm becoming drawn closer and closer to the argument that maybe what's sauce for the goose should be sauce for the gander in terms of justices of the peace too. So there you go.

Paralegals out there should be very, very concerned. You notice where, yesterday and today—here we are; we've been here three days now: Wednesday, Thursday and Friday. We aren't in the Amethyst Room, are we? This isn't being broadcast like the public hearings were. People who wanted to tune in to their legislative channel can't pick it up. I don't think this is being broadcast on legislative broadcast. If it is, the visuals are horrible. I apologize to people. We need better cameras in here. We've got to be able to do close-ups.

Here you go. That's the paralegal report. Maybe the writing's on the wall. Okay. Thank you, folks.

The Chair: Further debate? Seeing none, shall section 85 carry? Carried.

Section 86: Any debate?

Mr. Kormos: Yes, please. This is the insurance, as I understand it, the indemnity for professional liability. It's very important. Lawyers who have claims against them pay huger and huger premiums, depending, I presume, on the frequency of the number of claims and types of claims. The lawyer must purchase his or her insurance from errors and omissions through the law society.

I'm an advocate of public insurance. I'm not going to argue that competition between insurance companies necessarily makes insurance any cheaper for the consumer, but we didn't hear, because we didn't hear from the insurer, what's going to happen when paralegals, as members of the law society, become part of this community. Surely the regulatory regime is going to require insurance. Right now, paralegals are getting insurance in the private sector. Are they going to be pooled with lawyers? Are they going to be permitted to continue to obtain private sector insurance, as long as it's up to a minimum amount? Are they going to be required to join the errors and omissions insurance of barristers and solicitors? As I say, are the funds going to be pooled so that there's going to be cross-subsidization between a paralegal doing small claims work and a lawyer doing multi-million dollar real estate deals for Conrad Black, who won't give back the \$2.9-million ring he gave Babs, who he probably stole the money to buy it?

Interjection.

Mr. Kormos: Well, think about it, Mrs. Van Bommel.

It's a matter of questions unanswered but also questions not asked, because we didn't have the opportunity. This is not a healthy way to develop legislation.

1350

I understand the sense of urgency. The law society is just like a little puppy, bouncing, ready to get this bill going, because it wants to get its ducks lined up in terms of doing what it has to do. But this is not a healthy way to pass legislation like this. It isn't, it isn't, it isn't. If somebody can persuade me otherwise, let's go out and have a vodka martini after supper tonight.

The Chair: Any further debate? Seeing none, shall schedule C, section 86, carry? It's carried

Sections 87 to 94, any debate? Seeing none, shall sections 87 to 94 carry? Carried.

Section 95, government motion 62. Mr. Zimmer.

Mr. Zimmer: I move that section 95 of schedule C to the bill be amended by adding the following subsection:

"(0.1) Subsection 62(0.1) of the act is amended by adding the following paragraph:

"3.1 For the purposes of paragraph 5 of subsection 1(7.1), prescribing persons or classes of persons who shall be deemed not to be practising law or providing legal services and the circumstances in which each such person or class of persons shall be deemed not to be practising law or providing legal services;"

The Chair: Any debate?

Mr. Kormos: That is a run-on sentence. It's remarkable. It's so pleasant to read legislation where the sentences are straightforward, clear, where everybody can read it once and understand what it says. I understand

what this does, and I don't object to what it does, but it does it in a heck of an obtuse way.

The Chair: Any further debate? Seeing none, shall government motion 62 carry? Carried.

Mrs. Elliott: I move that subsection 95 (1) of schedule C to the bill be struck out and the following substituted:

"(1) Paragraph 4 of subsection 62(0.1) of the act is repealed."

The purpose of this amendment is that it's a technical amendment stemming from our previous motion to replace the term "licensee" with "paralegal".

The Chair: Any debate? Seeing none, shall PC motion 63 carry? All those in favour? Opposed? The motion is lost.

Government motion 64. Mr. Zimmer.

Mr. Zimmer: I move that paragraph 10.1 of subsection 62(1) of the Law Society Act, as set out in subsection 95(22) of schedule C to the bill, be amended by striking out "legal services provision committee" in the portion before subparagraph i and substituting "paralegal standing committee".

The Chair: Any debate? Seeing none, shall government motion 64 carry? Carried.

PC motion 65.

Mrs. Elliott: I won't be proceeding with this motion, Chair, given that the previous motion was identical.

The Chair: Withdrawn. Thank you.

Is there any further debate on section 95, as amended?

Mr. Kormos: One moment, please.

The Chair: Are we okay there, Mr. Kormos?

Mr. Kormos: Yes, thank you.

The Chair: Shall schedule C, section 95, as amended, carry? Carried.

We're on to section 96. PC motion 66.

Mrs. Elliott: I move that section 96 of schedule C to the bill be amended by adding the following subsection:

"(0.1) Subsection 63(1) of the act is amended by adding the following paragraphs:

"1. prescribing the classes of licence that may be issued under this act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence;

"2. governing the licensing of persons to practise law in Ontario as barristers and solicitors and the licensing of persons to provide legal services in Ontario, including prescribing the qualifications and other requirements for the various classes of licence and governing applications for a licence;"

The purpose of this is to lessen the public confusion here in the use of the various terms by retaining the term "barristers and solicitors" rather than "licensees."

The Chair: Any debate? Seeing none, shall PC motion 66 carry? All those in favour? Opposed? Lost.

PC motion 67. Ms. Elliott.

Mrs. Elliott: I move that section 96 of schedule C to the bill be amended by adding the following subsection:

“(0.2) Subsection 63(1) of the act is amended by adding the following paragraph:

“3. regulating the use of the title ‘paralegal,’ a variation of that title or an equivalent in another language in the course of providing or offering to provide legal services in Ontario;”

This is included in order to provide protection for the term “paralegal” and to explain its use.

The Chair: Any debate? Seeing none, shall PC motion 67 carry? All those in favour? Opposed? It's defeated.

Any further debate on section 96? Shall section 96 carry? Carried.

New section, government motion 68.

Mr. Zimmer: I move that schedule C to the bill be amended by adding the following section:

“96.1 The act is amended by adding the following section:

“Reports Regarding Regulation of Persons Licensed to Provide Legal Services

“Report after two years

“Definition

“63.0.1(1) In this section,

“‘review period’ means the period beginning on the day on which the Access to Justice Act, 2005, receives royal assent and ending on the second anniversary of that day.

“Report by society

“(2) The society shall,

“(a) assess the extent to which the bylaws made by convocation during the review period in relation to persons who provide legal services in Ontario are consistent with the principles set out in the document titled ‘Task Force on Paralegal Regulation Report to Convocation’ dated September 23, 2004, available from the society;

“(b) prepare a report of the assessment; and

“(c) give the report to the Attorney General for Ontario within three months after the end of the review period.

“Tabling in assembly

“(3) The Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the assembly if it is in session or, if not, at the next session.”

The Chair: Any debate?

Mr. Kormos: I want to question the language, because it says, “The society shall assess the extent” of compliance with the principles set out in the task force on paralegal regulation. That's the one we were talking about just a few minutes ago. I want to be very clear, because this is a report to convocation. It's a series of recommendations that preceded the legislation, and here, by suggestion—if this isn't the case, say so—the government is endorsing the report, because it's saying, “The society shall assess the extent to which the bylaws made by convocation ... are consistent with the principles set out in the document.” Hmm. That's strange. Again, this gives it the done deal sort of impression. We assume that the committee of paralegals and lawyers is going to make

recommendations to the benchers of the law society. This makes that exercise moot, academic.

1400

I could care less whether there's been any compliance with the recommendations made in the September 23, 2004, report. What I care more about is the effectiveness of that subcommittee of paralegals and lawyers in the context of the regime you're proposing. Once again, I find this very troubling, because it suggests that the test at the end of the day is going to be whether the scope of practice adopted by convocation is the scope of practice contained in the 2004 paralegal task force report. What it suggests is that those five paralegals on the subcommittee might as well stay home and not waste their time, effort or energy.

Good grief. Can't we at least feign sincerity? Do we have to be so crude in how we betray the whole exercise? Quite frankly, this committee exercise was moot, then. “Report back to the Attorney General.” Then the Attorney General will lay it on the Clerk's table so it'll be a public document.

I don't know. I can't read this in any other way than to suggest that the purpose is to see the extent to which there has been compliance with the recommendations, not non-compliance. This in no way permits somebody to draw the inference that the paralegal subcommittee is going to have any independent influence, independent of the report, whatsoever. I'd be far more interested in a report back that said, “To what extent did convocation comply with the recommendation of the paralegal subcommittee that's struck after the bill passes?” That's supposed to be the operative committee. That's supposed to be the source of direction. “Oh, they're going to make a paralegal the chair of that committee.” What condescending crap. “They're going to make a paralegal the chair.” What a cheap buyoff. This is remarkable. This is really remarkable and outrageous stuff, and it speaks volumes.

Don't forget we've got another review period coming up, which I'm going to have something to say about too. In two years, the AG wants to know whether or not the 2004 recommendations have been met. Boy, talk about woodshedding. Talk about predetermining a matter. Joe Stalin had nothing on you guys when it comes to show trials.

It's striking a committee of paralegals and lawyers, and a paralegal is going to be the chair, and they're going to sit down and discuss what the bylaws and what the scope of practice ought to be and how this whole regulatory system is supposed to develop and report back to convocation and, presumably, convocation is going to be guided by their direction, yet this amendment today says that nothing that committee prepares will be worth the paper it's written on.

Honest, you guys could foul up a drunk-up in a brewery. This is a horrible, horrible way to create public policy. There should be outrage across the province. Keyboards should just be being hammered. E-mails should just be shutting down whole service providers.

Earthlink, or whoever the Internet provider is—their computers should be crashing with the e-mails that should be being sent out across the province by paralegals, their families and their supporters. You haven't betrayed them as much as you've betrayed a whole bunch of the community out there who accept paralegals, who want them to be able to practise professionally in the province of Ontario. This exercise wasn't about paralegals; it was about the people of Ontario.

Look, we could have abolished the paralegal profession. It was an option the government had. They could have said, "Nope—no more paralegals; nobody can do it." But no, there's too much legitimacy for the profession, too much acceptance of it, too much bona fide need.

You got this? If somebody did this to you in your caucus, the paint would be peeling on the caucus room wall. If somebody blindsided you, bushwhacked you like this, you would be tearing strips off the author of that. They wouldn't know what hit 'em.

That's all I have to say about this.

The Chair: Thank you, Mr. Kormos. Any further debate? Seeing none, shall—

Mr. Kormos: Recorded vote, and a five-minute recess, please.

The Chair: Mr. Kormos has asked for a recorded vote and a five-minute recess.

The committee recessed from 1407 to 1412.

The Chair: The committee is called back to order. We're at the voting for government motion 68.

Ayes

Balkissoon, Flynn, Van Bommel, Zimmer.

Nays

Kormos.

The Chair: The motion is carried.

We're at schedule C, section 97, government motion 69.

Mr. Zimmer: I move that the heading preceding section 63.1 of the Law Society Act and subsection 63.1(1) of the Law Society Act, as set out in section 97 of schedule C to the bill, be struck out and the following substituted:

"Reports after five years

"Definition

"63.1(1) In this section,

"'review period' means the period beginning on the day on which all of the amendments to this act made by schedule C to the Access to Justice Act, 2005 have come into force and ending on the fifth anniversary of that day."

The Chair: Debate?

Mr. Kormos: I need to understand that the change is to create consistency with the amendment that was just

made creating section 96.1, that is, to change it from "Review and report" to "Reports."

Mr. Zimmer: The amendment corresponds to the amendment to section 69 of the bill. The heading would be changed from "Reviews and reports" to "Reports after five years."

Mr. Kormos: You're saying all that's changed is the heading?

Mr. Zimmer: Again, the amendment corresponds to the amendment to section 96 of the bill. The heading would be changed from "Reviews and reports" to "Reports after five years."

Mr. Kormos: Okay, all that changes is the heading? There's nothing in the section. I suppose it's the easiest way to do it, right?

The Chair: Further debate? Seeing none, shall government motion 69 carry? Carried.

Government motion number 70.

Mr. Zimmer: I move that clause 63.1(2)(b) of the Law Society Act, as set out in section 97 of schedule C to the bill, be amended by striking out "Legal services provision committee" and substituting "Paralegal standing committee".

The Chair: Debate? Seeing none, shall government motion number 70 carry? Carried.

PC motion number 71?

Mrs. Elliott: Since this is an identical motion to the previous motion, number 70, we won't be proceeding with this.

The Chair: Withdrawn.

Is there any further debate on section 97?

Mr. Kormos: Please, Chair. I don't know why the government wanted to change the heading from "Reviews and reports" to "Reports," because the sections talk about reviewing and reporting. Go figure. Maybe it was a make-work project, as if the people who write this stuff for us need any more work.

I want to support this proposition and I want to distinguish it from the previous section 96.1 that the government created by virtue of its amendment. Let's take a look at this: The society shall review and report, and an independent person shall review and report. I suppose the proof will be in the pudding five years down the road, because the report is to the effect of the regulation and the regulatory regime versus regulated and not members of the public.

It is regrettable that the government chose to create section 96.1, which seems designed to ensure that everybody's followed their marching orders. That's after a two-year time frame, and it's only going to be three years later that the Legislature and the public get a chance to see whether the regulatory regime has achieved that broad range of goals, including serving the public and giving public access to advocates that are less costly than lawyers.

The Chair: Any further debate? Shall section 97, as amended, carry? Carried.

Next we're dealing with sections 98 to 137. Mr. Kormos.

Mr. Kormos: Thank you. I want to question—go ahead, sir.

Mr. Zimmer: To 137 or 136?

The Chair: Section 137. Would the committee like a small break? Agreed? Take a two-minute recess.

The committee recessed from 1420 to 1422.

The Chair: Any debate on sections 98 to 137?

Mr. Kormos: Folks, we're getting close to the end of schedule C. The finalization of the clause-by-clause discussion of schedule C is coming near. I know people are waiting with some high levels of anticipation about that.

I want to make it clear: The revocation of a Queen's Counsel—there hasn't been a Queen's Counsel appointed in this province since the late 1980s. Ian Scott abolished the Queen's Counsel, as I recall. It had never meant much. All it meant is that, by and large, you were a political hack, because they weren't given out for excellence in the courtroom. There were some people with rather tame and unimpressive legal careers who became Queen's Counsel. It was political patronage. As I understand it, the federal government still does Queen's Counsel. I think it should be abolished across the country, because it creates a totally false impression. The people who have them know it. They use it to market their services.

I resent Queen's Counsel just about as much as I resent people who use honorary degrees—not the honours degrees, but the honorary ones. You phony person. It's an insult to people who earn PhDs, for instance. I don't have a PhD, trust me. People work really hard working for a PhD, and then somebody picks one up and then throws it after their name. If there's an invite from the Lieutenant Governor to attend some soiree over here at Queen's Park with the military types, the brass and all that stuff, go ahead, but honest, I see that, and it drives me crazy. It curls my hair when I see people using honorary degrees after their name. There are some political leaders who do that too. It just demonstrates how they probably can't be trusted at all if they can't be trusted to accurately identify their academic credentials.

I wish Queen's Counsel would be abolished entirely, but obviously, the revocation only applies to Ontario Queen's Counsels.

Why hasn't the law society been a little more assertive about controlling lawyers and their uses of "QC" in view of the fact that it no longer is, and hasn't for a long time been, a mark of excellence in the profession as much as coarse, crude political patronage and pork-barrelling and political favourites.

We had a little bit of discussion, and I hope this is going to be addressed, because there was a fellow here who was—he wasn't an LLP, he was an LPP—no, PLL. That's right; he was a PLL. Again, I don't begrudge him the use of the PLL after his name. The problem is, nobody knows what the heck it means anyway, but it's a fact that there are some letters after your name. Heck, when I sign letters out of Queen's Park, I don't even put "MPP" after my name because I figure, heck, your name

is typed "Peter Kormos." That's it, that's the end of the story. It sits up on the letterhead somewhere.

Just as a message to the law society, if we're going to develop consistency in how people present themselves to the public, paralegals and lawyers, let's then develop some consistency. There are some lawyers whom I actually know who have initials after their name that are some of these obscure knighthoods where you can buy your way in. It's true. If you go on the website, you can find them and you can call yourself a Knight of the Order of the Third Garter or something or whatever the case is. So people buy—well, they do. They buy these titles and then they put these initials after their name. It's deceptive, because there are folks out there, rightly or wrongly, who think that the more initials there are after your name, the better off they are in your hands, but it could be—we get insurance types in here, you know, the insurance broker and salesman types. Boy, they can develop some long lists of initials after their name, and it's gobbledegook. When they have their letters and they sign their signature lines, they put all these down but all they are are some courses they went to. They may be entitled to use them in terms of their profession, but please, let's put an end to this and get some uniformity and put everybody on a level playing field. If we're licensing lawyers and licensing paralegals and, presumably, if we're going to create categories of paralegals entitled to practise A, B or C, let's have some pretty clear standards about how people promote themselves.

That also raises the concern around—because paralegal firms now call themselves all sorts of things. XCOPPER is an example. I'm not criticizing them because they can, but is that going to be an acceptable style to the regulator? Can you call yourself "Get Out of Jail Free Legal Services"? Seriously.

I'm hoping that the regulator addresses this, which is why Queen's Counsels, if they're no longer a member of the law society—

Interjection.

Mr. Kormos: Yeah, that's right, because if people live long enough and they retire, then they get dues-free status in the law society, don't they, Ms. Elliott, when they're 90 years old or something? I don't mind if those people want to keep calling themselves QCs when they're not in practice.

That's just an opportunity for me to express that. Spokespeople for the law society may or may not have been listening to me when I said it, but who knows? I may have the opportunity over a small meal to remind them of it.

It's amazing how much more congenial people are getting as we're getting closer to the end of schedule C. The tension seems to have evaporated a little bit. But we're not quite there yet, are we?

The Chair: Further debate? Seeing none—

Mr. Kormos: Wait. No, they're my notes with respect to schedule D.

The Chair: Shall sections 98 to 137 carry? That's carried.

Any debate on schedule C, as amended?

1430

Mr. Kormos: Chair, obviously I have some things to say about schedule C, but this is what I propose to try to do. I'm not going to say them now. I propose to try to deal with the balance of this bill this afternoon and, unless the bill is completed in its entirety, I'll reserve my comments until this committee next meets, on Wednesday morning, at which time, I suspect—I don't know how long other people are going to be—the bill will probably wrap up. I'll be encouraging government members to join me in not sending the bill back to the House, because I don't think the bill is ready to be sent back to the House.

That's why I'm not speaking to schedule C now. It's not that I don't have concerns about it in its entirety, but because of some of the delays we encountered, I don't think we're going to get the finalization of the bill. But I do expect that Wednesday morning we'll have the bill finalized. We may get it done today.

The Chair: Further debate?

Mr. Zimmer: I submit, Mr. Chair, that we speak to schedule C now and, when we've completed that, vote on it and move on to D.

The Chair: Any further debate?

Mr. Kormos: You see, I can speak to schedule C any time I want. I can speak to schedule C when we're talking about reporting the bill back to the House. I'm not suggesting deferring the vote. Mr. Zimmer reinforces my sense that I'm not going to have time today to speak to schedule C when I speak to the bill in its entirety. I appreciate his assistance in that matter, because he's helped me now focus on where it should—

Mr. Zimmer: I want to vote on C.

Mr. Kormos: Of course we're going to vote on it. I wasn't going to use a substantial amount of time addressing schedule C. I'm going to do that at the completion of the bill when we get to the stage of, "Shall the bill be reported to the House?" That's why I wanted to give people a sense that, because of the delays today, I don't think that was going to happen today. It could have happened, but we had some delays today. You'd like to get some work done, and so be it, and it turned out for the better. But I'm just trying to give people fairly a sense of when they can expect to see this bill next and when they can expect to see the vote called on whether or not the bill will be sent back to the House for third reading. I appreciate Mr. Zimmer's help in focusing me in that regard and reinforcing my sense that I need that time to speak to C at the point where we talk about returning the bill back to the House.

Mr. Zimmer: As long as we vote on C today.

Mr. Kormos: Mr. Zimmer, you're anxious. Please don't be. There's no need for people to be anxious in this room; we're colleagues.

The Chair: Mrs. Elliott?

Mrs. Elliott: I'm also not asking for a deferral of the vote, but I would also like to reserve my final comments with respect to schedule C until the committee next meets.

Mr. Kormos: With respect to schedule C, have you called schedule C yet?

The Chair: No.

Mr. Kormos: No, you haven't. I'll then wait for you to call schedule C, as amended.

The Chair: If there is no further debate, shall schedule C, as amended, carry?

Mr. Kormos: No, no, Chair. We're going to talk about schedule C, as amended, right?

The Chair: Yes, schedule C.

Mr. Kormos: Yes. I'm voting against schedule C, and I'm going to speak to this further when we talk about the whole bill, because the bill isn't just about paralegals; it's about some other very serious matters as well. I want to make it clear that New Democrats support the proposition of paralegal regulation. I want to make that very clear. I want to make it clearer, even, that we wish that schedule C had been a stand-alone piece of legislation. I believe it could have received an even more thorough—no, I won't even say "even more thorough," because I'm not sure it received a sufficiently thorough consideration.

I also understand the government's frustration, and perhaps paralegals' frustration, at the inability—I don't think there's any dispute about this—of the paralegal community to come together sufficiently to present their own proposal with a single voice to the government when it comes to regulation. I understand the frustration that the Attorney General must have felt when he was one in a succession of many who made—Mr. Flaherty did make some significant effort around the issue of paralegal regulation; Mr. Sterling did; other Attorneys General have, going back to the days of Ian Scott, very, very conscious of the Ianni and Cory reports. There's no sense asking Ianni to come before the committee—he's dead—but Judge Cory is alive and well and very active, the chancellor up at York University. I don't know whether he would come to the committee, but when I requested the committee to support the proposition that we defer clause-by-clause to hear from others, I obviously contemplated the prospect of the committee inviting people, because the committee has that power, including Judge Cory.

The underlying concern expressed by both Ianni and Cory was the conflict-of-interest argument. As you know, Chair, conflict of interest is conflict of interest whether it's real or perceived. A perceived conflict of interest is conflict of interest.

As I say, I understand the frustration of Mr. Bryant when he went to the law society or felt compelled to go to the law society and ask them to undertake the task of regulating paralegals. But in the course of that, that fundamental issue of conflict—again, you can be critical, and many are, of what Judge Cory said about scope of practice, for instance. Fine; that's an aside. But I'm hard-pressed and haven't heard a single person contradict the Cory observation that there's a fundamental conflict of interest. I haven't heard a single person contradict that. I haven't heard a single intellectual dismantling of that argument.

Is the Law Society of Upper Canada incapable of regulating paralegals? Of course not. Of course they're not incapable of regulating them. Is the paralegal community capable of self-regulation in a structured way now? I suspect not. That's just the way it is. Then how do you become ready to self-regulate?

Understand that I am a critic; I have critiqued many times this move to self-regulation, this dismantling of the Ministry of Consumer and Commercial Relations. I believe that it is the state's role to regulate. As you know, there were debates around this trend towards self-regulation, whether it was real estate people, any number—I was on the side that said no, that the state should retain the regulatory role. Lawyers are very much an anomaly in terms of a regulated profession, because the source of their regulation—it's an old structure, but the motivation for their regulation was any number of things, including the very closed nature of that society of professionals. Again, I understand that. That's not critical when I say that; I'm not being critical.

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It seems to me that one of the options available to the government, if they believe in self-regulation, to address the concerns of the conflict—well, the options were either to address the conflict issue and be candid about it and acknowledge that it was a problem out there and work with it, or to look at different models. It seems to me that the one model that has never been looked at is the proposition that the state should assume a traditional role for the state: the regulation of paralegals. It wouldn't take very long, in my view, for that profession, then, once it's regulated, to develop to the point where it could, if one was politically inclined to approve this, self-regulate. It's just an observation.

Dental hygienists: We all know them. We know them because we use them as professionals. We also know them because they have been a very potent lobby group here at Queen's Park, obviously lobbying for the statutory ability to practise independent of dentists. See, dental hygienists can't practise independently of dentists—for that matter, even billing through a dentist. They've got to be under the direct supervision of a dentist. Yet even dental hygienists, under the direct supervision of a dentist, have their own regulatory regime that's independent of dentists and their regulatory body. That's interesting, because here we're talking about a world in which paralegals are going to be permitted—and I don't say that in any sort of condescending way. The law will acknowledge that paralegals work independently of law offices—we don't know that, because we don't know what the law society has in mind, except I think the general understanding is that that's going to be the case. So here, unlike dental hygienists, who have to work in a dentist's office and under the—if a dentist is not there, the dental hygienist doesn't work. They have their own regulatory body. Here we're talking about paralegals, as a profession, operating on a stand-alone basis—sole practitioners in as many cases as not—yet they don't have their own regulatory regime.

I am not suggesting that the law society is incapable of regulating paralegals. I'm not suggesting the law society is incapable of developing a scope of practice. They will demonstrate themselves to be very capable at defining a scope of practice and setting standards—most significantly, in my view, educational standards. I endorse the proposition that the same character standards that apply to lawyers for admission should be applicable to paralegals. Lord knows they're not that high.

My concern is that once we started travelling down this path, we, as legislators, should have—you didn't have to agree with Cory, you didn't have to agree with Ianni, but as legislators, we had a responsibility and we continue to have a responsibility, in my view, to address the issue head-on. It's one thing to go to the law society and say, "If I ask you to the prom, will you come?" It's another thing to insist that they dance every dance with you. There's nothing inherently wrong with the government having gone to the law society, saying, "If we ask you to regulate, will you?" I think the gap, the problem, the failure—it's not the law society's failure, and I want to make that very clear; it's the government's failure—is the failure to ensure that in the course of developing the legislation, debating it and submitting it to committee process, there was discussion and debate around fundamental things like minimum standards and scope of practice. We are paid reasonably good money, and we don't do a whole lot of heavy lifting in this job. I'll say what I've said before: None of us has to get up at 5 a.m. to pour concrete foundations or work on the apartment towers downtown up on the 30th floor, bolting together iron, out in the bitter cold, come January and February. We have a responsibility to protect the public interest as legislators. I believe that. We have a responsibility to protect scrupulous paralegals from unscrupulous paralegals, to protect trained and skilled paralegals from untrained and uneducated paralegals, to protect professional paralegals from very unprofessionals out there who purport to be paralegals. You don't pass the buck off to somebody else.

I believe that we could have investigated the option of state regulation, because I predict paralegals will never have their own self-regulatory body—not with what we see now. I'm not saying that's necessarily a bad thing. If paralegals can, in the context of the law society, enhance their status within the law society so that they are players, if you will, in terms of the structure and the governance, there may well be a point, perhaps five years down the road, where paralegals can say, "It was a rough start, but things are starting to come together." But self-regulation? Don't kid yourselves, because there's always been this little response of, "Oh, well, who knows what might happen down the road? Let the law society"—very paternalistic—"take care of you now. But you know, if you're good boys and girls, if you're really good and you clean up your rooms and you wash your hands and brush your teeth, we might take you bowling this afternoon. You might get to go to the petting farm." That's a pretty condescending and paternalistic attitude, isn't it, Mr. Zimmer?

Let me know when it's 3, okay?

That's a pretty paternalistic and condescending attitude. I then find us passing legislation, section by section, since it is clause-by-clause, from time to time having no idea what the legislation means—none whatsoever—and more regrettably, not being prepared to set a matter down, to set it aside for a day or two until we do find out what it means.

Did I say this yet? I'll be voting against schedule C, Chair. I'll be voting against it. I have concerns about other parts of the legislation. I want it to be very clear that anybody who thinks for a minute that any member who would vote against schedule C somehow doesn't believe paralegals should be regulated is being totally, thoroughly dishonest to themselves and to the people who they might say that to.

Those are my comments at this point in time, because I wanted to make it clear that I was voting against schedule C. I wanted to provide some outline as to why I will be voting against schedule C, should it go to a vote this afternoon. I believe we could have gone through this process in a far more effective way, a far fairer way, a far more productive way. We could well, during the course of this process, have addressed the numerous concerns raised, and indeed enhanced the inevitable regulatory regime.

1450

The reason people don't T-bone you in their cars at intersections where there are stop signs isn't because they're afraid of getting caught by the cops; there aren't enough police in the world to watch every intersection everywhere. People accept, by and large, the rules of the road. That's how highways work. They don't work because there are penalties for violating the rules; most people obey the rules of the road because they accept them as legitimate and as reasonable and as fair and in everybody's interest.

Similarly, in regulatory regimes, there aren't enough inspectors out there in any number of professions that are regulated professions or occupations—everything from mortgage brokers to doctors and lawyers and dentists—to be looking over the shoulder of every one of these practitioners. The regulatory regimes work because the people being regulated buy into them. They understand how the regulation is good for them. It's good for the public. It has legitimacy.

My concern about this proposal, and more importantly, about the government's failure to address concerns that have been raised both explicitly and implicitly, is that the regime won't have the legitimacy that it should amongst paralegals, those people who are being regulated. That's not a healthy state of affairs.

So thank you kindly, Chair. I will be asking for a recorded vote, please.

The Chair: Any further debate? Seeing none, shall schedule C, as amended, carry?

Ayes

Balkissoon, Flynn, Van Bommel, Zimmer.

Nays

Elliott, Kormos.

The Chair: That's carried.

Now we have an NDP motion, 71.1. Mr. Kormos?

Mr. Kormos: Yes. Everybody's got a copy of that, Chair. During the course of committee hearings and in response to submissions by CARP and the Ontario association of senior citizens, concerns were expressed—

The Chair: Mr. Kormos, can you move the motion, please, 71.1?

Mr. Kormos: Just one minute. I've got the floor.

The Chair: Go ahead.

Mr. Kormos: Thank you. Concerns were raised on behalf of primarily senior citizens about the failure of the new Limitations Act, with its two-year limitation period, to provide access to litigation for plaintiffs who are the victims of misconduct and bad advice on the part of investment advisers, amongst others. Everybody knows the issue. James Daw has written about it in the Toronto Star. It's been the subject matter of commentary even at the federal level. I was surprised, in some of the material I got, that a former chair of the Ontario Securities Commission had addressed the issue of the inadequacy of the limitation period.

Therefore, I seek unanimous consent to move the following motion—you see, the reason is because if I moved the motion and somebody on a point of order asked the Chair whether or not it's in order, it'll be out of order and then the issue is gone, right? So I seek unanimous consent to move the following motion, which is not in order because it amends a section of the Limitations Act which is not addressed by the amendments to the Limitations Act in Bill 14, and this motion is:

I move that schedule D to the bill be amended by adding the following section:

"0.1 Section 4 of the Limitations Act, 2002 is repealed and the following substituted:

"Basic limitation period

"4(1) Unless this act"—after repealing existing section 4.

"(1) Unless this act provides otherwise, a proceeding shall not be commenced in respect of a claim,

"(a) after the sixth anniversary of the day on which the claim was discovered, in the case of a claim described in subsection (2);

"(b) after the second anniversary of the day on which the claim was discovered, in every other case.

"Breach of fiduciary duty to consumer re investments

"(2) Clause (1)(a) applies to a claim based on a breach of a fiduciary duty that is owed, in relation to investments, to a consumer as defined in the Consumer Protection Act, 2002."

The Chair: Mr. Kormos has sought unanimous consent. We have unanimous consent. Please move your motion.

Mr. Kormos: I move that schedule D to the bill be amended by adding the following section:

"0.1 Section 4 of the Limitations Act, 2002 is repealed and the following substituted:

"Basic limitation period

"4(1) Unless this act provides otherwise, a proceeding shall not be commenced in respect of a claim,

"(a) after the sixth anniversary of the day on which the claim was discovered, in the case of a claim described in subsection (2);

"(b) after the second anniversary of the day on which the claim was discovered, in every other case.

"Breach of fiduciary duty to consumer re investments

"(2) Clause (1)(a) applies to a claim based on a breach of a fiduciary duty that is owed, in relation to investments, to a consumer as defined in the Consumer Protection Act, 2002."

Very briefly: We know the issue. It was addressed to the committee by CARP and by yet a second seniors' organization in association with the United Senior Citizens of Ontario. The crisis is one around our folks and our grandfolks being ripped off by bad financial planners, bad brokers, bad mutual fund dealers who are investing—these are the people who sold Nortel at 50 bucks on the way down, telling you that there was still lots of money to be made. Nortel was a senior citizens' stock because of the way it was spun off from the telephone industry. Nortel was part of that blue-chip family of stocks that seniors bought because they wanted the 1%, 1.5%, 2% dividends. Everybody knows the story. It skyrocketed. It went to well over \$100. There was a class action, which apparently has been successful or at least has been resolved, where Nortel is paying back—I don't know the quantum—some of the purchasers of Nortel during a couple of very specific windows, periods of time, when Nortel was being purchased, because Nortel was not being forthcoming about the value of the stock. But it's incredible that experienced brokers were still recommending Nortel. Nortel had topped \$100, and experienced brokers—how many times have they seen this?—were telling people to buy at 50 bucks on the way down, saying, "Oh, it'll rebound." Well, other analysts call that sort of rebound—not really, but they use this phrase—the dead cat bounce. It was incredible that people were being encouraged, and people did buy it.

As well, the mutual fund industry: Again, without an exhaustive analysis of it, everybody here—it has become so much a part of our daily lives, if either not for ourselves for other family members, the exploitation of naive and trusting investors and selling mutual funds that they have no business investing in but that have huge expense ratios. Of course, the interest for the dealer selling them is the trailer fees, because the investment adviser, the dealer, continues to get paid regardless of whether the fund goes up or down. So you've seen it again, seniors being called upon to invest in very risky stuff—stupid, stupid stuff.

The stockbrokers who churn accounts: I said this before and I want the chance to say it again, because every one of these guys who do this should be shot and strung up and quartered. When you get a constituent in

your office who's 75, 80 years old and who's of modest means—if they're super rich, they can do whatever they want—and they show you their broker's monthly report showing trading every month in significant volumes, that's just totally inappropriate. That account is being churned, and the broker is buying and selling so that the broker can make commissions without any interest whatsoever in the welfare of that investor.

1500

Indeed, there have been some brokers who have been dealt with through the securities regulatory regime for doing precisely that, and there has been, from time to time, some money paid back. The difficulty for these folks is that they don't discover the matter until after the two-year limitation period. They are appealing for an expansion in the case of investments—oh, and by the way, "consumer" as defined in the Consumer Protection Act means an individual, not a corporate investor.

I think Cornelia Schuh did this drafting. She did a brilliant job, especially when she was required to work with my instructions, of making the proposal concise.

So I encourage support for this. It is a means of addressing those seniors' concerns, and I look forward to the vote on it.

The Chair: Further debate?

Mr. Zimmer: One of the major reasons that Ontario's former limitations legislation was so heavily criticized was that it established different limitation periods for different types of claims. Some of these limitation periods were much longer, and others were much shorter, than two years. One of the goals of the Limitations Act, 2002, was to replace these limitation periods with a two-year basic limitation period that would apply to the vast majority of claims, similar to what was done recently in Saskatchewan and Alberta. This much-streamlined regime benefits from being clear and certain.

The point here is that it's very important to note that the two-year period runs from the discovery of the claim, not from the breach of the duty—that is, whoever did the bad stuff when the victim realized bad things had been done. So if the victims do not know that they've been cheated, the time won't run out for them until they realize they've been cheated.

The government, however, does recognize that the two-year period may be inappropriate in certain cases. As a result, the government has proposed in Bill 14 to allow for anyone to extend the two-year period by agreement. In addition, the time does not run while the parties are attempting to mediate their dispute with a neutral third party. The bill expands the class of people who qualify, such as a neutral.

Mr. Kormos: That response—and I understand it—is regrettable, and it's most regrettable for this reason: It signals very clearly that the government is loath to deal with this concern, and I'm not speaking about necessarily just here at the committee. I understand why the government may not want to pass this type of amendment in this context, but the language used by the parliamentary assistant, which I have every reason to believe is

the language of the ministry at this point in time—I know the parliamentary assistant to be too fair, too compassionate, too considerate and too rational a person for those to be his words.

The language signals that these folks and their advocates were seeking a change, an amendment to the Limitations Act to extend the period for investment scams and wrongs done in the course of investment deals. I think it's sad because what it signals is that the government not only isn't going to have its members support the amendment today, but that the government is not going to be addressing this in the Legislature. I appreciate the response, and as I say, I understand Mr. Zimmer's pain in having to deliver the message. I do. But there's the response.

What that does for us is signal to us that we had better start mobilizing people. Mr. Anderson in our NDP research is going to be getting hold of legislative counsel to help draft up an amendment that we can then table as a private member's bill. I don't know; the Conservatives may well do the same thing. That will heighten the pressure and start getting some of these folks in the members' galleries at Queen's Park.

We're at election day minus 365, give or take a few days—E minus 365. It seems to me that the government wants to take on grey power at E minus 365. Far be it from me to give anybody political advice. What do I know about politics? But it strikes me as strange that the government would want to take on grey power at this point in the game, doesn't it, Ms. Elliott?

This is good. We've been warned, we've been told, and the message has been clearly telegraphed that those folks—our folks and our grandfolks—who are being scammed and ripped off by unprofessional, unscrupulous and untrained investment dealers, stockbrokers and mutual fund dealers are on their own.

Thank you very much for the chance. I thank the government very much for giving unanimous consent to introduce the motion, which is not irregular but out of order and couldn't have been entertained or discussed. I do thank them for that; I appreciate that. I also appreciate the direct, clear message coming from the government, through the parliamentary assistant, although I disagree with it.

The Chair: Thank you. Any further debate? Seeing none, all those in favour?

Mr. Kormos: A recorded vote, please.

Ayes

Kormos.

Nays

Balkissoon, Van Bommel, Zimmer.

The Chair: That is defeated.
Schedule D, section 1: Any debate?

Mr. Kormos: This section has ended up being problematic. Subsection (2) everybody agrees with, it seems to me. That was that in the course of utilizing a third party in an effort to resolve a dispute, the limitation period is suspended, it doesn't run during that period of time. So you're not punished for trying to resolve something without accessing the courts.

But then we've got that whole issue around tolling agreements. There are mixed reviews out there about the tolling agreements; you know that. On the one hand, the Wild West free enterprisers, the shoot-'em-up cowboy entrepreneurs, came to us and said, "Let us contract out of the Limitations Act any which way we want." Part of me wanted to say to these entrepreneurs, "You want it that way? By all means, go ahead. Have it that way." But then we heard from architects, didn't we? Architects were one of the professional communities that was most eager to see the Limitations Act amendments introduced. We also heard from people in the construction industry here in this committee. The first argument is that there has to be some certainty, some reasonable amount of time after which a claim can't be made, because you have to know how long you've got to keep your records. It's as simple as that. I think there's some law about how long you've got to keep your income tax stuff. By virtue of me having to ask people what it is, it clearly indicates that I have no idea what it is. Lord knows, it's a good thing an accountant does my income tax, because they keep all the stuff. That was the first argument.

1510

The second argument seemed to be that not only did they need certainty but there was a point after which it really was unfair and impractical, not only to the parties but to the courts. I think there's some strength to that argument. You're going to be calling up judges in courts, already with lengthy dockets, to then have to deal with cases where there's a little bit of evidence here, a little bit of evidence there, and Witness A, B or C has died, and judges then are going to be expected to make decisions. Some could say, "It's all part of the business of judging. If they don't think there's enough evidence to substantiate a claim, then they could simply deny the claim."

I think there is some public interest, from the point of view of the administration of justice, in having reasonable limitation periods like the 15-year one. That's the one we're talking about, the 15-year one, by and large. The Wild West cowboy entrepreneurs, the free enterprisers, the hard-line capitalists said, "It's up to us what we want to contract. If we want to, in the course of contracting, agree to a 20-year limitation period, a 30-year limitation period, let us."

The tolling agreement appears to be an American phenomenon. Its only source in terms of the phrase "tolling agreement" comes from American legal references. With respect to the tolling agreements, I've got a hard time with the way banks—especially banks; I'm a credit union fan myself—impose, in effect, agreements upon their customers that are reductions of the limitation period.

Remember David Agnew was here, the ombudsman for the banking industry. Mr. Agnew, in his report, had the one case—I remember the number still, \$4,900, the cheque that was written on the person's account and it wasn't his signature. The bank said to the customer, "No, you're out 4,900 bucks," and he's saying, "Are you nuts? I didn't sign the cheque. It wasn't my cheque. It's your responsibility not to be giving money out of my account unless you check the signature."

From a practical point of view, let's face it, nobody checks signatures on cheques any more, do they? Not at all. The stuff is all processed electronically. It zips through some kind of machine that just scans it. The fact is, the signature has become irrelevant to the cheque as it's passed from one financial institution to the other, as compared to somebody who goes to a bank and says, "Here's a cheque I received from Vic Dhillon. It's on his personal account. Will you cash it?" And it's only if I go to Vic Dhillon's bank and only if I happen to hit a teller who knows Vic Dhillon as a customer and who says, "That's not Vic Dhillon's signature." So the signature means nothing.

The interesting thing was that the ombudsman—because the bank said you have to demonstrate secure control over your cheques. Yikes. I've been banking with credit unions, among others, for a whole pile of years, like everybody else. Nobody ever said that to me at any point in time. I just never thought about it. When I've opened any number of bank accounts, I do know that—oh, the Toronto-Dominion Bank once ripped me off for a pile of money because it was one of those dormant accounts. I actually went there, and it was a negative balance. They said I owed them money, I said, "Are you guys nuts?" I'd opened an account while I was articling here in Toronto and then, around 12 years later, I thought there's at least 1,000 bucks in that account. There was not only nothing left, it was negative. That frosted my glasses. But that's the Toronto-Dominion Bank: They rob you blind the first chance they get.

So here's a customer case. The ombudsman basically settled it for 50 cents on the dollar. But the other observation that was made to us was, for instance, about the credit card account, where you have to indicate or notify them of any discrepancies within 30 days or else you're, as we say down in Welland, SOL.

I would like to see businesses like the banks and so on denied the opportunity to reduce limitation periods, because that's going to affect the 30-day rule. It's a reduction of a limitation period. It's a 30-day limitation period. If you haven't reported the discrepancy in 30 days, you're, as I say, SOL.

I support subsection (2) very much. I think it's a smart part of the Limitations Act. But on the tolling agreements, we do not have sufficient debate before us on the impact of creating tolling agreements. We don't have sufficient information about its impact on other facets of the commercial world out there and, more importantly, the little people. Look what it does. The big bidder gets to agree to an extended limitation period, but what does

that do to the little guy? Does it put him or her at a disadvantage? The small, single-person operator in the building trades—the plumber, the electrician, who operates out of his or her garage and an Econoline van—are they put at a disadvantage? Yes. I don't think they're in a position to go out there negotiating tolling agreements as part of an offer or a bid on an RFP from a developer that's building 100 townhouses in a subdivision.

So notwithstanding my strong support for subsection (2), I want to indicate that section 1 of the act with subsection (2) has support. Then we have subsection (2)—I want to be very clear about this—which deals with tolling agreements among other things. That's where the bill is divided along those lines. Subsection (3) of course is the royal assent portion. So I support subsection (2) of section 1. We'll be voting on behalf of that. Subsection (2) I cannot support and, quite frankly, encourage others not to support it too. Why are we rushing into this? Again, this is a strange little thing. Subsection (2) of section 1—good amendment. But subsection (2) with its repeal of subsection 22(2)—I don't understand how people feel comfortable voting on that at this point. Please don't support it.

The Chair: Further debate? Shall schedule D, section 1, carry? All those in favour? Opposed? Carried.

Section 2: government motion 72.

1520

Mr. Zimmer: I move that section 2 of schedule D to the bill be struck out and the following substituted:

"2. Section 22 of the act is repealed and the following substituted:

"Limitation periods apply despite agreements

"22(1) A limitation period under this act applies despite any agreement to vary or exclude it, subject only to the exceptions in subsections (2) to (6).

"Exception

"(2) A limitation period under this act may be varied or excluded by an agreement made before January 1, 2004.

"Same

"(3) A limitation period under this act, other than one established by section 15, may be suspended or extended by an agreement made on or after the effective date.

"Same

"(4) A limitation period established by section 15 may be suspended or extended by an agreement made on or after the effective date, but only if the relevant claim has been discovered.

"Same

"(5) The following exceptions apply only in respect of business agreements:

"1. A limitation period under this act, other than one established by section 15, may be varied or excluded by an agreement made on or after the effective date.

"2. A limitation period established by section 15 may be varied by an agreement made on or after the effective date, except that it may be suspended or extended only in accordance with subsection (4).

"Definitions

“(6) In this section,

“‘business agreement’ means an agreement made by parties none of whom is a consumer as defined in the Consumer Protection Act, 2002; (‘accord commercial’)

“‘effective date’ means the day the Access to Justice Act, 2005 receives royal assent; (‘date d’entrée en vigueur’)

“‘vary’ includes extend, shorten and suspend (‘modifier’).”

The Chair: Any debate?

Mr. Kormos: Mr. Zimmer, help us. Again, I appreciate the explanation in your modest compendium. Can we very quickly talk about what this does and doesn’t do?

Mr. Zimmer: Counsel with the Ministry of the Attorney General, please introduce yourself for the record.

Mr. John Lee: My name is John Lee. I am counsel with the Ministry of the Attorney General, policy division.

There are only two significant differences between the motion and section 2 of schedule D in the bill. The term “business agreement” in the motion replaces the term “business purposes” in the bill, so a “business agreement” would be defined as an agreement made by parties, none of whom is a consumer.

Mr. Kormos: Businesses. Generally that means commercial entities as compared to regular folks.

Mr. Lee: Well, anyone who’s not a consumer.

Mr. Kormos: You mean a consumer as defined in the Consumer Protection Act.

Mr. Lee: That’s right. So if anyone is a consumer as defined in the Consumer Protection Act, then they cannot agree to varying—

Mr. Kormos: You wouldn’t know this, but in the bill Ms. Schuh drafted for me, she talked about a consumer as defined by the Consumer Protection Act, to make it clear that this was regular folks and not commercial enterprises. How does the Consumer Protection Act, for your purposes, define “consumer”?

Mr. Lee: It’s the same definition.

Mr. Kormos: Which is?

Mr. Lee: I can’t recall what the definition of “consumer” is.

Mr. Kormos: Just paraphrase.

Mr. Lee: I believe it’s anyone acting for household purposes and not for business purposes.

Mr. Kormos: Okay. That’s what I understood it to be: Plain folks instead of somebody acting in a commercial or trade capacity.

Mr. Lee: That’s essentially right.

Mr. Kormos: Okay, that’s good.

Mr. Lee: The second difference between the motion and the bill is simply that the motion proposes to disallow agreements that would suspend or extend the 15-year ultimate limitation period unless the claim has been discovered.

Mr. Kormos: Those are the agreements that—remember, we talked about two types of tolling agreements: the front-end tolling agreements that were made in the course

of the initial contract, and what I think we can just call the back-end ones, where you discover the claim but you agree to extend the limitation period, hoping that you don’t have to sue, right?

Mr. Lee: That’s correct.

Mr. Kormos: So you’re not permitting tolling agreements as advocated by the Wild West entrepreneurs who want to be able to use them to compete, for instance? That’s what we heard, that if people are bidding on a construction project, a bidder might say, “Well, as a matter of fact, to make my bid more attractive, I’ll agree to a limitation period of 30 years. You’ll have 30 years within which to sue me for negligent work or improperly done work.”

Mr. Lee: That’s correct. There are really two limitation periods in the Limitations Act, 2002: There’s the two-year basic limitation period and the 15-year ultimate limitation period. This motion says that you cannot extend that 15-year ultimate limitation period unless you have a claim.

Mr. Kormos: So the people who wanted to contract out a limitation period for the purpose of creating their initial contract are not being served by this amendment.

Mr. Lee: Well, yes. You can agree to a longer limitation period. There’s a two-year limitation period that you can agree to extend, but you cannot extend the 15-year period before the claim has been discovered.

Mr. Kormos: And the only people who can agree to extend the two-year limitation period are non-consumers?

Mr. Lee: Anyone can extend the two-year period.

Mr. Kormos: Can you vary it in any way? Can you reduce it?

Mr. Lee: Only those who are contracting with other businesses would be able to. Non-consumers would be able to reduce the two-year period, but otherwise, no one else can. So a consumer would not be able to enter into an agreement that would effectively reduce that limitation period.

Mr. Kormos: That’s why you’ve got “vary” here, because “vary” is the broadest: It’s extend, shorten and suspend. And variations of an agreement—help me, because—

Mr. Lee: That’s correct.

Mr. Kormos: For most of us, this is complicated stuff. But you know this stuff, right? You dream about this stuff.

I’m looking at 22(1): “A limitation period under this act applies despite any agreement to vary or exclude it, subject” to the following exceptions.

That takes us into subsection (2): “A limitation period ... may be varied ... by an agreement made before January 1....” So that deals with historic agreements, right?

Mr. Lee: That’s correct.

Mr. Kormos: Okay, we can put that one aside now.

“A limitation period ... other than one established by section 15, may be suspended or extended”—not varied—“by an agreement made on or after the effective date.”

Mr. Lee: That's the 15-year period.

Mr. Kormos: So you can extend it but you can't shorten it, because it doesn't use the word "vary."

Mr. Lee: That's right.

Mr. Kormos: "Section 15"—which is the 15-year limitation period—

Mr. Lee: That's correct.

Mr. Kormos: —"may be ... extended ... only if the relevant claim has been discovered." That's the parallel of subsection 1(2), or the addition of subsection (2), the suspension of the running of a limitation period in the event that you're making efforts to settle. That's the logic there. The relevant claim has been discovered—

Mr. Lee: I'm sorry, I've lost you there.

Mr. Kormos: I'm talking about section 1 of the bill, which we just voted on.

Mr. Lee: That they're not related?

Mr. Kormos: That's the parallel of it. The scenario where that would seem to be applicable would be when you've got a claim, but you're going to sit down with the other party and say, "Whoa. Let's see if we can work this out."

Mr. Lee: You're right; that's right.

Mr. Kormos: "Let's not spend money on lawyers or paralegals. Let's not hire paralegals yet," because, let's face it, once this becomes law, paralegals will be regulated, right?

Mr. Lee: I can't comment.

Mr. Kormos: Maybe. We don't know that: "So let's not go spending money on paralegals yet, because we can agree to basically suspend the limitation period." Thank you very much.

It was very important that you walk us through that. I know, of course, the other members knew exactly what these sections meant and they didn't need that, but I did. Mr. Balkissoon, Mr. Flynn, Mrs. Van Bommel, Mr. Zimmer, they know this stuff upside down, but I don't. I needed your help.

1530

Mr. Flynn: We didn't want to brag.

Mr. Kormos: But you notice I didn't ask Mr. Flynn for help walking me through the amendment; it was you who I asked for help.

Mr. Flynn: You would have got a different answer.

Mr. Kormos: Thank you very much.

The Chair: Any further debate? Shall government motion 72, carry? Carried.

Any further debate on section 2? Shall section 2, as amended, carry? Carried.

Any debate on section 3? Seeing none, shall section 3 carry? Carried.

Any debate on schedule D, as amended? Shall schedule D, as amended, carry? Carried.

We're on schedule E, section 1, PC motion number 73.

Mrs. Elliott: I move that schedule E to the bill be amended by adding the following section:

"1.1 Part V of the act is amended by adding the following sections:

"Duties of chief administrator

"76.1 The chief administrator of the court service appointed under section 74 of the Courts of Justice Act shall establish and maintain,

"(a) a system to ensure that detailed information about the schedules and availability of potential police witnesses is provided, in a timely manner, to persons who set trial dates, in order to maximize the productivity of police resources that are devoted to giving evidence;

"(b) a prisoner escort and court security detail with a police service funding option;

"(c) a video remand program involving the deployment of justices of the peace as required outside regular court hours and at places other than courthouses; and

"(d) an early case resolution facilitation fund to help support expedited disclosure to accused persons.

"Trial dates and police witnesses

"76.2 A person who sets a trial date under this act shall take the information provided under clause 76.1(a) into consideration before setting the date."

The purpose of this proposed amendment is to allow for maximizing police resources and to ensure that their productivity is enhanced.

The Chair: Any further debate? Seeing none, shall PC motion 73 carry? All those in favour? Opposed? It's lost.

Next is a government notice, we'll skip—Mr. Zimmer? Any debate on section—

Mr. Zimmer: Just a second.

The Chair: Any debate? Mr. Kormos?

Mr. Kormos: This is interesting. We were talking about section 1, which is the new section 75.1 proposed by the government. This is the conflict with municipal provisions and, for the life of me, I don't understand. Again, I appreciate the notes that have been prepared with respect to this section, but it seems to me to be a sound section—here you go—one that I like.

Mr. Flynn: That's why we're getting rid of it.

Mr. Kormos: What are you going to do—

Mr. Zimmer: We just can't get on the same page.

Mr. Kormos: —deny me the opportunity to support one of the government's sections?

The Chair: Further debate? Shall section 1 carry?

Mr. Kormos: Recorded vote.

Ayes

Kormos.

Nays

Flynn, Van Bommel, Zimmer.

The Chair: That section is lost.

Section 2: PC motion number 75.

Mrs. Elliott: I move that section 83.1 of the Provincial Offences Act, as set out in section 2 of schedule E to the bill, be amended by adding the following subsection:

"Defendant's rights

"(4.1) Despite anything else in this section, the use of electronic means for providing evidence is not permitted if it infringes on the defendant's right to challenge and cross-examine witnesses."

This is pretty much self-explanatory. It maintains the principles of fair trial and the right of cross-examination, which should be paramount.

The Chair: Any further debate? Seeing none, shall PC motion 75 carry? All those in favour? Opposed? That is lost.

Any debate on section 2?

Mr. Kormos: I'm going to be very brief on this. This is scary stuff. It's going to be done by regulation. It contemplates telephone conferences or other electronic means. What could that possibly mean? Well, I thought about it for a couple of seconds, and then I thought about it more for a couple of minutes: evidence by video conference, audioconference. I don't know what the difference is between an audio conference and a telephone conference. I suppose you could be using a computer to do an audio conference. They're talking about where you can either see the person testifying as well as hear him or her or they're talking about merely hearing the voice of the person testifying. "Or other electronic means": That means, literally, e-mail—well, it does. It means fax, facsimile. That's what it means. This is scary stuff.

This happened with the sections dealing with JPs, where one of the leading government members said, "Oh, well, there's certain stuff that's too complex for JPs to hear, even if it is provincial offences, so you've got to have real judges hear it," as if the rest of the charges were not important enough to have real judges hear them; to wit, highly qualified JPs.

I don't care what the charge is; in our society, in our culture, in our legal system, in our democracy, (1) the presumption of innocence is such a profound and important element of our history, (2) a right to full answer and defence is not only an important element of our history, it's a part of our Constitution. It's a constitutional right.

I know that courts have permitted absentee evidence, and increasingly so, as technology allows it, in any number of circumstances. We permit, for instance, the victims of crimes, especially child victims, to testify behind a screen so that the accused can't glare at him or her or intimidate. The courts have ruled that acceptable, and I think the public sees that as reasonable.

1540

You've got the use of evidence taken at a preliminary hearing where, if the witness disappears or dies, that evidence, under certain circumstances, can be read into the record and forms part of the evidence at trial. That was evidence that was tested by cross-examination the first time around. There are clearly—and the courts have embraced technology, but have used it with discretion and judiciously.

I, for the life of me—you see, the argument here is, "Well, these are only going to be highway traffic matters, stop sign charges, etc." I don't care. If you believe in the

presumption of innocence and if you believe in the right of full answer in defence, you believe in it for everybody and for all offences. End of story. Because if there's anything more objectionable than a guilty person being found innocent, it is an innocent person being found guilty. You know how people are outraged when somebody who, at least from their perspective, is just so patently, obviously guilty yet is found not guilty, perhaps because of a technicality? People are outraged when that happens. Do you know what's more outrageous than that? An innocent person who's found guilty. It really is. The fact that a guilty person gets acquitted is as often as not a test of the system and a demonstration that the system works because reasonable doubt prevails. Again, nobody advocates guilty people being found not guilty, but it means that the system works if it's applied fairly and universally. Yes, I believe that from time to time, people who did the crime get found not guilty. I'm not talking about a danger to society, because obviously, if somebody's a danger to society and doesn't get convicted and they were guilty, then the potential risk out there is huge. It's just that the injustice of an innocent person being found guilty is profound.

For this to be done by regulation, in my books, doesn't cut it. What would be acceptable would be provisions that create extraordinary circumstances or, at the very least, special circumstances and allow for the judge, justices of the peace, the judicial authority to exercise discretion and to have to exercise it judiciously. That's where I can start to live with the proposition of using technology to give evidence, but this is tying a judge's hands. The prospect here is to say that the judge shall receive evidence that is transmitted by telephone or by e-mail.

You've already heard from at least one participant that in determinations of, let's say, credibility—and that's one of the hardest, most challenging things that judges do; I think it is. They can read the law. Here on University Avenue, you've got clerks and you've got people getting case law for you, and lawyers will help you get the law. The judge has got to sit there, and if you've got two people telling two very different stories, the judge has to decide if they're conflicting, and if the conflict goes to the guilt or innocence, the judge has to decide which one is telling the truth. We don't like doing that in our daily lives with people we know. It's just a horrible thing to have to—if you say, "You're telling the truth," to the other person, without saying "You're a liar," you're telling the other person, "You're a liar." It's not a pleasant thing to have to do.

So a judge, a judicial authority, needs to look at all the circumstances. They hear the person and they watch the person. They watch the demeanour of the person. They watch how the person responds physically. They watch the body language of the person. So much of it is simply inside their head. It's automatic. They don't have a checklist there saying how you determine, but it's experience, and it's applying some science, it's applying some law and it's applying a whole lot of human life experience.

So for the life of me, I don't know how we can trust the Lieutenant Governor in Council. If Mr. Bartleman were making the decision I'd trust him implicitly, with no hesitation, but it's not Mr. Bartleman who is going to make the decision. He's just going to sign the regulation or the order or have somebody seal it or stamp it. So I will be voting against this.

Here I am. I voted for section 1 of the—well, Jeez, I support the Liberals on section 1 and what happens? They vote down their own amendment. So let's see if they can exercise the same wisdom when it comes to section 2. I will be voting against section 2. Look at this: evidence to be given under oath, electronic means; you can do the oath by electronic means as well. Where does this take us? How much more grief do we need in terms of the land titles system and forged and fraudulent documents? Now we're going to start administering oaths over the telephone? Wow. It just boggles the mind, where that could take us. It's not healthy stuff. It's not good. This is efficiency-driven. There's nothing wrong with efficiencies, but when efficiencies override some very fundamental things, then you've got to take a step back. Thank you, Chair.

The Chair: Any further debate?

Mr. Zimmer: What this PC motion 75 would do is provide that electronic means would not be allowed if they compromised the defendant's right to cross-examination. The provisions don't do that. That right is absolutely guaranteed under the Charter of Rights. In any event, when the judge hearing the matter feels that there's an issue there about the electronic evidence, it's up to the judge to deal with it and decide whether to permit it to be heard electronically or to listen to counsel's arguments on behalf of the party and decide that it should be vive voce evidence. So I urge my colleagues to vote against this.

The Chair: Mr. Kormos?

Mr. Kormos: Mr. Zimmer, with his provocative comments—once again, 83.1, “A witness may give evidence by video conference.” It doesn't say a judge “may allow” a witness to give evidence based on the following considerations; it's “A witness may give evidence.” Quite frankly, the statute seems to make it the witness's election. So I disagree with you when you suggest that somehow the statute—your provision here—incorporates a high level of legal supervision or, rather, judicial supervision. “A witness may give evidence.” It seems to me that's the witness's election, or the party calling them.

The Chair: Any further debate? Seeing none—

Mr. Kormos: A recorded vote, please, sir.

The Chair: Shall section 2 carry?

Ayes

Balkissoon, Flynn, Van Bommel, Zimmer.

Nays

Elliott, Kormos.

The Chair: That's carried.

We're on to PC motion 76.

Mrs. Elliott: I move that schedule E to the bill be amended by adding the following section:

“2.1 The act is amended by adding the following section:

“Access to information

“165.1 Despite any other act or regulation, when a transfer agreement under section 165 is in force the municipality is entitled, for the purpose of collecting fines, to have access to any information about holders of drivers' licences that is in the possession of the Ministry of Transportation.”

The purpose of this amendment is to allow the municipalities to gain information they require to be able to collect fines, which previously the courts had access to, prior to the transfer of this responsibility to the municipalities.

The Chair: Any further debate? Seeing none, shall PC motion 76 carry? All those in favour? Opposed? Lost. 1550

Section 3: government motion 77.

Mr. Zimmer: I move that subsection 3(2) of schedule E to the bill be amended by striking out “Sections 1 and 2 come into force” and substituting “Section 2 comes into force”.

Mr. Kormos: On a point of order, Chair: Section 1 doesn't exist anymore. It is the process automatically that section 1 simply isn't referred to. I'm saying the motion is out of order. Doesn't the correction occur automatically without the need for an amendment? Would the bill actually be printed and then the subsequent statute, with the reference to section 1—because, in fact, it's not section 1 anymore once it comes into—

Ms. Tamara Kuzyk: The amendment would have to be made to the coming into force provision. Then the schedule gets renumbered on the third printing and the reference to it within the commencement provision would be updated. It's actually something you have to take step by step.

Mr. Kormos: What would happen if you didn't amend it? It wouldn't impede anything, would it?

Ms. Kuzyk: You'd have an erroneous reference in the legislation. It would be unclear, perhaps, what section you might be referring to. You would have two section references in the commencement. It's just not something that our office would permit to happen, quite frankly. It's not a situation I've been faced with.

Mr. Kormos: I appreciate that it wouldn't be very attractive.

Ms. Kuzyk: And potentially confusing. We'd just want to make sure the number references remain clear. So we only have one provision going forward, we only make a reference to that one provision, and we renumber on third reading printing.

Mr. Kormos: Thank you. Really fast: When this bill now gets printed for third reading, there will be a schedule E and there won't be a section 1. Section 2: “This act is amended by adding the following section:

Video" will become section 1 without having to amend it. Is that correct? There won't be a section 2, right?

Ms. Kuzyk: Section 3 would be renumbered as a section 2, and then the reference within what is currently in the first reading version 3(2), as amended to section 2, would then become a reference to section 1.

Mr. Kormos: But clearly you're suggesting that the royal assent section that refers to itself would be a contradiction.

I'm not trying to give you a hard time here, honestly. I just want to be able to use this, maybe, at some point, somewhere down the road; to put it in my back pocket and pull it out late in the day during committee sittings.

Just as section 3 becomes section 2, is it not possible for the references to 1 and 2, clearly referring to sections that need proclamation, to be adjusted in the same manner? Do they not fall into the same rule, in terms of automatic adjustments?

Ms. Kuzyk: Once you get rid of what would now be the extra section reference, which is the reference to section 1, then yes—that reference to what would now just be section 2 in 3(2) would then just be renumbered to section 1. So you would have section 1 coming into force on proc, and the commencement section coming into force on royal assent.

Mr. Kormos: Okay. This is going to require some renumbering anyway.

Ms. Kuzyk: Are you referring to the entirety of Bill 14?

Mr. Kormos: Yes.

Ms. Kuzyk: I would have to agree with that.

Mr. Kormos: Somebody's got to have to sit down and do some real renumbering here, even though there were no amendments made changing numbers, because these guys have really screwed things up. In the course of three days they've created a whole lot of work. People are going to have to sit down and renumber sections. Thank you very much.

The Chair: Any further debate? Seeing none, shall government motion 77 carry? Carried.

Any debate on section 3, as amended? No? Shall section 3, as amended, carry? Carried.

Schedule E: Any debate on schedule E?

Mr. Kormos: Yes, if I may. We should be very uncomfortable passing this and delegating so much of the drafting of it to regulation. We're going to make substantial changes to evidentiary rules at the provincial offences level. They should be upfront, in the open, and up there and publicly debated. New Democrats oppose schedule E.

The Chair: Any further debate? Shall schedule E, as amended, carry? Carried.

Schedule F, section 1: government motion 78.

Mr. Zimmer: I move that the French version of subsection 1(1) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following definition:

"'modification autorisée' Modification autorisée par la partie V. (French version only)"

The Chair: Any debate? Seeing none, shall government motion 78 carry? Carried.

Government motion 79.

Mr. Zimmer: I move that the definition of "consolidated law" in subsection 1(1) of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

"'consolidated law' means a source law into which are incorporated,

"(a) amendments, if any, that are enacted by the Legislature or filed with the registrar of regulations under part III or under a predecessor of that part, and

"(b) changes, if any, that are made under part V; ('texte législatif codifié')"

The Chair: Any debate? Seeing none, shall government motion 79 carry? Carried.

Government motion 80.

Mr. Zimmer: I move that clause (b) of the definition of "source law" in subsection 1(1) of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by striking out "under part III" and substituting "under part III or under a predecessor of that part".

The Chair: Any debate? Seeing none, shall government motion 80 carry? Carried.

Government motion 81.

Mr. Zimmer: I move that section 1 of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following subsection:

"Reference to amendment includes reference to repeal, revocation

"(1.1) A reference in this act to amendment in relation to legislation is also a reference to repeal or revocation, unless a contrary intention appears."

The Chair: Any debate? Seeing none, shall government motion 81 carry? Carried.

Any debate on section 1? Shall section 1, as amended, carry? Carried.

Any debate on section 2? Shall section 2 carry? All those in favour? Opposed? That's carried.

Government motion number 82.

1600

Mr. Zimmer: I move that part I of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following section:

"Designation by chief legislative counsel

"2.1 The chief legislative counsel may designate one or more lawyers employed in the office of legislative counsel to exercise the powers and perform the duties of the chief legislative counsel in his or her place."

Mr. Kormos: After the exercise we just went through, I'm surprised that the parliamentary assistant uses the word "lawyers." Well, think about it in this amendment. Is he talking about people who are members of the Law Society of Upper Canada? We learned—it was drilled into us—that the legislation doesn't define "lawyer." It says "barrister and solicitor." "Practice of law," I think, is referred to at some point. Is the government—and if it is, just say so—prepared to allow lawyers who aren't licensed to practise law in the province of Ontario? They

could well be lawyers. A lawyer's a lawyer. It's like riding a bicycle. A lawyer from British Columbia, a lawyer from South Africa, a lawyer from the Carpatho-Rusyn region of eastern Europe—or did you mean to say people who are licensed by the law society, such that paralegals could be employed in this role? It seems to me that if the government, zealous as it is about paralegal regulation—surely paralegals should be considered for this job. Is the use of the word “lawyer” here precise enough?

Mr. Zimmer: Mr. Gregory.

Mr. John Gregory: I'm John Gregory from the Ministry of the Attorney General. The section refers to one or more lawyers employed by the office of legislative counsel, so really the reference goes to how the employees of the office of legislative counsel are classified. They're classified as lawyers under government employment regulations, so the question of their licensing or otherwise by the law society doesn't arise. The question is, who in the office of legislative counsel can receive the delegation from the chief when the chief is on vacation? The answer is that she, at this point, or he, in the future possibly, will look to people who are classified as lawyers in that office.

Mr. Kormos: That is good. I appreciate the explanation.

The Chair: Any further debate? Seeing none, shall government motion 82 carry? Carried.

Government motion number 83.

Mr. Zimmer: I move that part I of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following section:

“Duty, obsolete acts

“2.2 The chief legislative counsel shall, from time to time, provide to the Attorney General a list of acts, or any parts, portions or sections of acts, that have been rendered obsolete by events or the passage of time.”

The Chair: Any debate? Mr. Kormos.

Mr. Kormos: There was a practice—and you've got to help us with this—whereby the Legislature had a bill presented to it that was a cleanup bill. Was it related to the creation of the RSOs on a decade-by-decade basis? People out there go, “Holy moly. Do you mean that whole acts or parts, portions or sections of acts can simply disappear from the statutes of Ontario?” Give us some help, in terms of an example. Mr. Zimmer, because people should know. What's a “for example”? Mr. Zimmer?

Mr. Gregory: The question of what happens to an act when the facts to which it applies don't really exist anymore is a fairly complex one. This particular section, the proposed section 2.2 in motion 83, simply tells the chief legislative counsel to report from time to time, as it comes to his or her attention, things that seem to be obsolete, you know, whether you're regulating something that didn't exist anymore: the manufacture of buggy whips, what have you.

But the question of what happened with the decennial revisions, the RSO 1990s and previously, is dealt with extensively in the Legislation Act in this schedule, be-

cause it's not happening anymore. There is a whole part of schedule F on change powers by which legislative counsel make little corrections and updates without changing the legal effect.

But what happened in the consolidations is that obsolete statutes weren't repealed; they were just left out of the consolidation. You have over 1,000 statutes at present that are unrepealed, unconsolidated statutes, and they go back to about 1870, if not right to 1867. What is their legal status? Their legal status is that they are in force, but they may have no effect. One of the things done by this bill later on, in section 92, is to repeal all of them except the ones that are mentioned specifically. It was quite a battle composing that, because there's the Ontario-Manitoba border act, 1879. It turns out that that's very active, particularly in that area of the province, but there are reasons why, legally, we had to leave that in force. A lot of them are cleared out, but statutes don't repeal themselves and the decennial consolidation did not repeal them.

Basically, the purpose of 2.2 is to put things in front of the Attorney General from time to time so that he, having verified the opinion of the chief legislative counsel, can bring a bill into the Legislature, put it to the Legislature and say, “Could you please clean up the following five, 10 acts?” and just keep us from getting back into the situation of having 1,000 unrepealed, unconsolidated and—probably, but we're not quite sure—obsolete statutes.

Mr. Kormos: Thank you. Interesting stuff.

Mr. Gregory: It bears on certain of the other sections we'll come to—to save time when we come to them. Thank you.

The Chair: Any further debate? Seeing none, shall government motion 83 carry? That's carried.

We're going to be dealing with sections 3 to 5. Any debate? Shall sections 3 to 5 carry? Carried.

Section 6: We're going to government motion number 84.

Mr. Zimmer: I move that section 6 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

“Commencement of acts

“6.(1) Unless otherwise provided, an act comes into force on the day it receives royal assent.

“Same

“(2) Commencement and short title provisions in an act and the long title of the act are deemed to come into force on the day the act receives royal assent, regardless of when the act is specified to come into force.

“Selective proclamation

“(3) If an act provides that it is to come into force on a day to be named by proclamation, proclamations may be issued at different times for different parts, portions or sections of the act.

“Time of commencement and repeal

“Commencement

“6.1(1) Unless otherwise provided, an act comes into force at the first instant of the day on which it comes into force.

"Limitation

"(2) Unless otherwise provided, an act that comes into force on royal assent is not effective against a person before the earlier of the following times:

"1. When the person has actual notice of it.

"2. The last instant of the day on which it comes into force.

"Repeal

"(3) Unless otherwise provided, the repeal of an act takes effect at the first instant of the day of repeal."

The Chair: Any debate? Seeing none, shall government motion number 84 carry? Carried.

Any debate on section 6, as amended? Shall section 6, as amended, carry? Carried.

Section 7: Any debate? Shall section 7 carry? Carried.

We're on section 8: government motion 85.

1610

Mr. Zimmer: I move that section 8 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

"Endorsements on acts

"8(1) The Clerk of the Assembly shall indicate on every act, after the title, the date on which it receives royal assent.

"Same

"(2) The date of assent forms part of the act.

"Reserved bills

"8.1(1) In this part, a reference to the day or date on which an act receives royal assent is, in the case of a bill reserved by the Lieutenant Governor, a reference to the day on which the Lieutenant Governor signifies, by speech or message to the assembly or by proclamation, that the bill was laid before the Governor General in Council and that the Governor General was pleased to assent to it.

"Endorsement, date of reservation

"(2) The Clerk of the Assembly shall indicate, on every bill that is reserved, the date of reservation."

The Chair: Any debate?

Mr. Kormos: Help us with the reservation of a bill, just very quickly.

Mr. Gregory: Constitutionally, the Lieutenant Governor is asked, when a bill is passed by the Legislature, to give royal assent to it. The Lieutenant Governor has the option not to give assent but simply to reserve it for the opinion of the Governor General, I believe, and Her Majesty, no doubt, in constitutional theory. This has not happened, I think, in this century in Ontario. It happened in the 1930s for Alberta statutes. It exists; we can't constitutionally ignore it. The purpose of the motion is to move it out into its own section so that you don't think, "Oh, this must happen frequently. It's right in there in the coming-into-force provision." As I say, it has not happened in my lifetime—I'm probably the oldest person in this room—or possibly in my father's lifetime in Ontario. So we can't ignore the fact that it could happen, but we can shuffle it to its own section.

Mr. Kormos: This is a constitutional convention?

Interjections.

Mr. Gregory: I don't have the Constitution Act in front of me. It's written into the Constitution that this happens. The reason it refers to "Governor General in Council" is because the Lieutenant Governor sends it to Ottawa to say, "What do you think of this provincial legislation?" The Governor General says, "Sure, let them do it," or no at that point, at which point it's conveyed back, which is what gets written on the copy of the bill.

Mr. Kormos: Some people were concerned there was a typo, and that's fair enough. I appreciate it. This is fascinating stuff, isn't it?

Mr. Zimmer: That's where I got troubled myself for a second. Thank you, Mr. Gregory.

The Chair: Any further debate? Seeing none, shall government motion 85 carry? Carried.

Any debate on section 8, as amended? Shall section 8, as amended, carry? Carried.

Any debate on sections 9 to 13? Seeing none, shall sections 9 to 13 carry? Carried.

Section 14: government motion 86.

Mr. Zimmer: I move that subsection 14(6) of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

"Proof of office not required

"(6) A regulation signed by an officer or agent under subsection (5) may be filed without proof of the authority, office or signature of the person signing on behalf of the corporation or entity, but the signed regulation shall show his or her office or title."

The Chair: Any debate? Seeing none, shall government motion 86 carry? Carried.

Government motion 87.

Mr. Zimmer: I move that section 14 of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following subsection:

"Public inspection

"(8) A filed regulation shall be made available for public inspection."

The Chair: Any debate? Shall government motion 87 carry? Carried.

Any debate on section 14, as amended? Shall section 14, as amended, carry?

Section 15: government amendment 88.

Mr. Zimmer: I move that section 15 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

"Filing date

"15(1) A regulation shall not be filed on a date that is later than four months after the date on which it was made or, if approval of the regulation is required, the date it is approved.

"Consent to extend filing date

"(2) Despite subsection (1), a regulation may be filed on a date that is later than that described in subsection (1) if consent to do so has been obtained from the person or entity authorized to make the regulation and, if the regulation requires approval, from the person or entity authorized to approve the regulation.

"Date to be specified

“(3) The consent shall specify a date after the four-month period described in subsection (1) by which the regulation shall be filed.

“Timing of consent

“(4) A consent to extend the filing date and any subsequent consents may be given at any time,

“(a) whether before or after the four-month period described in subsection (1) has expired; and

“(b) whether or not a date set out in an earlier consent has expired.

“Filing restriction

“(5) The regulation shall not be filed after the date specified in the consent.

“Consent to be filed

“(6) The consent extending the filing date shall be filed with the registrar at the same time as the regulation is filed, and the rules for signing and certifying the regulation set out in section 14 apply to the consent, with necessary modifications.

“Same

“(7) A consent filed under this section need not be published.

“Transition

“(8) This section does not apply to a regulation made on or before the coming into force of this section, even if approval, if required, was given after the coming into force of this section.”

The Chair: Any debate? Seeing none, shall government motion 88 carry? Carried.

Any debate on section 15, as amended? Shall section 15, as amended, carry? Carried.

Section 16: Any debate on section 16? Shall section 16 carry? Carried.

Section 17: government motion 89.

Mr. Zimmer: I move that section 17 of the Legislation Act, 2005, as set out in schedule F to the bill, be amended by adding the following subsections:

“Deemed validity of filing

“(3) If a regulation that fails to meet the requirements of this section is inadvertently accepted for filing, the regulation is deemed to be validly filed despite that failure.

“Same

“(4) Subsection (3) shall be interpreted only as validating a procedural irregularity.”

The Chair: Any debate? Seeing none, shall government motion 89 carry? Carried.

Section 17: Any debate? Shall section 17, as amended, carry? Carried.

Section 18: government motion 90.

Mr. Zimmer: I move that section 18 of the Legislation Act, 2005, as set out in schedule F to the bill, be struck out and the following substituted:

“When regulation effective

“18(1) A regulation that is not filed has no effect.

“Same

“(2) Unless otherwise provided in a regulation or in the act under which the regulation is made, a regulation comes into force on the day on which it is filed.

“No retroactivity authorized

“(3) Nothing in this section authorizes the making of a regulation that is effective with respect to a period before its filing.

“Time of commencement and revocation

“Commencement

“18.1(1) Unless otherwise provided in a regulation or in the act under which the regulation is made, a regulation comes into force at the first instant of the day on which it comes into force.

“Limitation

“(2) Unless otherwise provided in a regulation or in the act under which the regulation is made, a regulation is not effective against a person before the earliest of the following times:

“1. When the person has actual notice of it.

“2. The last instant of the day on which it is published on the e-Laws website.

“3. The last instant of the day on which it is published in the print version of the Ontario Gazette.

“Revocation

“(3) Unless a regulation or an act provides otherwise, the revocation of a regulation takes effect at the first instant of the day of revocation.

“Proof of making, approval, filing and publication

“When made

“18.2(1) Unless the contrary is proved, the date indicated on the e-Laws website or in the print version of the Ontario Gazette as the date on which a regulation was made is proof that the regulation was made on that date.

“When approved

“(2) Unless the contrary is proved, if approval is required for the making of a regulation, the date indicated on the e-Laws website or in the print version of the Ontario Gazette as the date on which approval was given is proof that the regulation was approved on that date.

“When filed

“(3) Unless the contrary is proved, the date indicated on the e-Laws website or in the print version of the Ontario Gazette as the date on which a regulation was filed is proof that the regulation was filed on that date.

“When published on e-Laws

“(4) Unless the contrary is proved, the date of publication indicated for a regulation on the e-Laws website is proof that the regulation was published on the e-Laws website on that date.

“When published in the Ontario Gazette

“(5) Unless the contrary is proved, the date of publication indicated for a regulation in the print version of the Ontario Gazette is proof that the regulation was published in the print version of the Ontario Gazette on that date.”

The Chair: Any debate? Seeing none, shall government motion 90 carry? Carried.

Section 18: Is there any further debate? Shall section 18, as amended, carry? Carried.

Seeing that it's well past 4 o'clock, I'd like to thank everybody. This committee is adjourned.

The committee adjourned at 1622.

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